

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

75-7280

DOCKET NO. 75-7280

RAMSEY CLARK and CHANDRA CARR,

Plaintiffs-Appellants

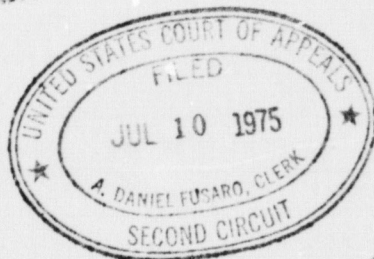
-against-

ALEX ROSE, DONALD SZANTHO HARRINGTON,
THE LIBERAL PARTY OF THE STATE OF NEW
YORK, THE STATE EXECUTIVE COMMITTEE,
JACOB R. JAVITS and ARTHUR H. SCHWARTZ,
REMO J. ACITO, WILLIAM H. McKEON and
DONALD RETTALIATA as members of the
State Board of Elections,

Defendants-Appellees

Appeal from the United States District Court For the Southern
District of New York

APPELLANT'S APPENDIX



Of Counsel

RAMSEY CLARK
37 WEST 12th STREET
NEW YORK, NEW YORK 10011
Tel: 989-6613

LEON FRIEDMAN
HOFSTRA UNIVERSITY
SCHOOL OF LAW
HEMPSTEAD, NEW YORK 11550
Tel: 560-3859

LAWRENCE W. SCHILLING
36 WEST 44th STREET
NEW YORK, NEW YORK 10036
Tel: 869-3725

Attorneys for Appellants

PAGINATION AS IN ORIGINAL COPY

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UNITED STATES DISTRICT COURT

Jury demand date:

JUDGE TYLER

D. C. Form No. 106 Rev.

74 CIV. 2598

TITLE OF CASE

ATTORNEYS

RAMSEY CLARK and
CHANIRA CARR

VS.

ALEX ROSE
DONALD SZANTHO HARRINGTON
THE LIBERAL PARTY OF THE STATE OF NEW YORK
THE STATE COMMITTEE OF THE LIBERAL PARTY
THE STATE EXECUTIVE COMMITTEE
JACOB K. JAVITS and
JOHN J. CHEZZI, secy of State of New York

For plaintiff:

Lawrence W. Schilling
36 WEST 14th St. Rm 307 NYC10036 B69

For defendant:

Herzfeld & Rubin, P.C.
40 Wall St. NYC10005 344-0680
(Liberal Party Defs)

Trubin, Sillocks Edelman & Knapp
375 Park Ave NYC10022 PL 9-5400
(Def. Jacob K. Javits)

Louis J. Lefkowitz, Atty Gen. State of N
2 World Trade Center, NYC10047

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk	4/18/74	L. Schilling	115	
J.S. 6 mailed ✓	Marshal	4/2/74	W. Schilling		115
Basis of Action To Invalidate primary designation by State Committee of Liberal Party.	Docket fee				
	Witness fees				
Action arose at:	Depositions				

ua

JUDGE TYLER

74 CIV. 25

PROCEEDINGS

DATE

Jun 17-74 Filed complaint and issued summons.

Jul 11-74 Filed OPINION# 40951. Conditions for convening of 3 judge court have been met, at least as far as 1st count of complaint is concerned, pliffs' motion to convene a 3 judge court is granted, etc. as indicated. A copy of this memorandum and request for issuance of appropriate order are being sent to Chief Judge of this circuit. So Ordered. Tyler, J. (mn)

Jul 12-74 Filed Summons with Marshal's Returns. Served:
 The State Executive Committee by personal service on 6/21/74
 " " Committee of Liberal Party by D.S. Harrington "
 " " Liberal Party of State, of NY by " "
 Donald Eganthe Harrington " " 6/18/74
 Alex Rose personally on 7/2/74
 Jacob K. Javits by Miss Pearlman, Secy
 John J. Ghazzi, Secy of State by Marguerite Hahn, auth to accept on 6/24/74

Jul 15-74 Filed Designation of Judges in addition to Tyler, J., Mansfield, US Circuit Judge, USA 2nd Circuit, Brieant, Jr. US District Judge. Fainberg, Acting Chief Judge USCA, 2nd Circuit.

Jul 18-74 Filed Deft. Jacob K. Javits Addl Memorandum of Law.

Jul 19-74 Filed Affdvt by Herbert Rubin for Deft. Rose. H&R

Jul 19-74 Filed LIBERAL PARTY DEFTS ANSWER. TSE&K

Jul 22-74 Filed Memorandum of Law on behalf of Jacob K. Javits.

Jul 22-74 Filed Defts ANSWER of Jacob K. Javits.

Jul 19-74 Filed Pliffs Correspondence.

Jul 19-74 Filed Pliffs' Memorandum of Law. The Wilson-Pakula Law is unconstitutional. LJL

Jul 11-74 Filed Defts ANSWER. (page of 11)

Jul 11-74 Filed Atty General's Brief.

Jul 11-74 Filed Memorandum on behalf of defts, Rose, Harrington, Liberal Party and its committees in opposition to Pliffs' application for convening of 3 Judge Court.

Jul 22-74 Filed Brief for Republican State Committee (Amicus Curiae)

Jul 17-74 Hearing held before 3 judge court, Mansfield, Tyler, Brieant and concluded. All decisions reserved.

Jul 30-74 Filed OPINION# 41029. At least upon facts presented by pliffs in this case, therefore, the statute works a denial of equal protection of the laws nor a denigration of the right to vote as protected by 1st and 14 amendments. Pliffs' claim that the statute is unconstitutional is dismissed and Court declines to restrain the State Board of Elections from processing the designation of deft Javits by Liberal Party. So Ordered. MANSFIELD, TYLER, BRIEANT, JR. (mn) 7/17/74

Jul 27-74 Filed Memorandum on behalf of defts Rose, Harrington, Liberal Party and its committees.

Jul 17-74 Filed Defts Board Members Atty General's Suppl. Brief.

Dec. 11-74 Filed Deft. Members of the State Board of Elections, Affdvt with Notice of Motion for judgment dismissing complaint for failure to state a claim; or for judgment declaring such statute to be constitutional and not in violation, et. ret. 1/31/75.

Dec. 16-74 Filed Deft. Jacob K. Javits Affdvt Notice of Motion for an order dismissing complaint ret. 12/20/74.

Dec. 16-74 Filed Deft. Jacob K. Javits Memorandum of Law.

1/27/75 Filed Notice of Appearance by Attys for pliffs.

1/29/75 Filed Pliffs' Memorandum of Law in opposition to defts' motion to dismiss.

1/29/75 Filed Certificate of Service of Memorandum of Law in opposition to defts' motion to dismiss by mail on 1/24/75 to Herzfeld & Rubin, E.C. Atty Gen. Lefkowitz & Rubin, es.

JUDGE: 10-21

DATE

FILINGS--PROCEEDINGS

DATE	FILINGS--PROCEEDINGS
1/30/75	Filed Liberal Party Defts Affdvt&Notice of Motion-for-an order dismissing complaint as against defts,Rose,Harrington,Liberal Party- of State of NY&State Exec.Committee ret.1/31/75,2:15 P.M.
2/13/75	Filed ORDER. Complaint dismissed as against debt. Jac b K.Javits without leave to amend,and judgment be entered-dismissing action against Jacob K.Javits with prejudice.JUDGMENT ENTERED:Clk.(mn) Ent.2/19/75
3/13/75	Filed Steno End.on motion of 12/16/74. Motion granted on consent.SETTLE ORDER.Tyler,J.(mn)
3/17/75	Filed OPINION# 42053. Motion to dismiss is granted in favor of all of defts left in case.So Ordered.Tyler,J.(mn)
3/17/75	Filed Memorandum of Law on behalf of Liberal Party Defts in support of their motion to dismiss complaint.
3/28/75	Filed JUDGMENT. Motion to dismiss is granted,against all defts with prejudice Tyler,J. JUDGMENT ENTERED.Clk(mn) Ent.3/31/75
4/30/75	Filed Pltffs Notice of Appeal from judgment of 3/31/75 dismissing action. (Mailed notice to Herzfeld&Rubin&Louis J.Lefkowitz,Esqs. on 5/5/75)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAMSEY CLARK and
CHANDRA CARR,
Plaintiffs,

- v -

ALEX ROSE, DONALD SZANTHO HARRINGTON,
THE LIBERAL PARTY OF THE STATE OF NEW
YORK, THE STATE COMMITTEE OF THE LI-
BERAL PARTY, THE STATE EXECUTIVE COM-
MITTEE, JACOB K. JAVITS and JOHN J.
GHEZZI, as Secretary of State of the
State of New York,
Defendants.

S U M M O N S

74 Civ. 2598

To the above-named Defendants:

You are hereby summoned and required to serve upon Lawrence W. Schilling, attorney for the Plaintiffs, at Room 307, 36 West 44th St., New York, N.Y. 10036, telephone: (212) 859-3775, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Raymond F. Burghardt

Clerk of Court

(Seal of the U.S. District Court)

E. A. Becker

Dated: New York, N.Y.
June 17, 1974

(This summons is issued pursuant
to Rule 4 of the Federal Rules
of Civil Procedure.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAMSEY CLARK and
CHANDRA CARR,
Plaintiffs,

- v -

ALEX ROSE, DONALD SZANTHO HARRINGTON,
THE LIBERAL PARTY OF THE STATE OF NEW
YORK, THE STATE COMMITTEE OF THE LI-
BERAL PARTY, THE STATE EXECUTIVE COM-
MITTEE, JACOB K. JAVITS and JOHN J.
GHEZZI, as Secretary of State of the
State of New York,
Defendants.

COMPLAINT

74 Civ.

COUNT ONE

1. This is an action to invalidate and set aside a designation purportedly made by the defendant State Committee of the Liberal Party on or about June 15, 1974, naming defendant Jacob K. Javits as its candidate for the office of United States Senator in the general election scheduled for November 5, 1974, and for other relief, on the ground that the waiver provisions of the Wilson-Pakula Law, sec. 137.4. of the Election Law of the State of New York (Chapter 17 of the Consolidated Laws) ("the Election Law"), and other related provisions of the Election Law under which the designation was purportedly authorized, are unconstitutional in that they deprive plaintiffs and others of the equal protection of the laws and of other rights with respect to the election of a United States Senator that are secured by the Constitution and laws of the United States, and on the further and related ground that the wrongful conduct of certain of the defendants hereinafter described leading to the purported designation, in closing the designation process to all candidates other than defendant Javits, and in manipulating it in his favor, similarly deprived plaintiffs and others of equal protection of the laws and other rights with respect to the election of a United States Senator that are secured by the Constitution and laws of the United States.

2. This Court has jurisdiction over the action under 28 U.S.C. §§ 1331, 1343(3) and (4). The action arises under federal common law and 42 U.S.C. §§ 1983, 1985 (2) and (3) and 1983 and under Article I, sec. 4 and the First, Fifth, Fourteenth and Seventeenth Amendments to the Constitution of the United States. Declaratory and Injunctive relief is sought under 28 U.S.C. §§ 2201 and 2202. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$10,000. The relief sought includes injunctive relief such as may be granted only by a three-judge court pursuant to 28 U.S.C. § 2231.

3. Plaintiff Ramsey Clark is a citizen and resident of the State of New York. He is a declared candidate for the office of United States Senator from the State of New York to be filled in the general election on November 5, 1974, and is seeking the party nomination of the Democratic and Liberal Parties. He is an enrolled member of the Democratic Party.

4. Plaintiff Chandra Carr is a citizen and resident of the State of New York. She is an enrolled member of the Liberal Party and a district leader of the Liberal Party from the 62nd Assembly District.

5. Defendant Alex Rose is a Vice-Chairman of the defendant Liberal Party and is the most influential leader, or one of the most influential leaders, of the defendant Liberal Party.

6. The defendant Liberal Party is one of the four parties currently recognized in the State of New York, as defined in sec. 2.4. of the Election Law.

7. The defendant State Committee of the Liberal Party is a party committee organized and operating under Article 2 of the Election Law.

8. Under the rules of the defendant Liberal Party, the defendant State Executive Committee consists of the officers of the defendant State Committee and members elected by the State Committee, and has the power to act for the full State Committee when such State Committee is not in session, but subject to its rules and approval.

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9. Defendant Donald Szanthe Harrington is the Chairman of the defendant Liberal Party, the defendant State Committee and the defendant State Executive Committee.

10. Defendant Jacob K. Javits is an enrolled member of the Republican Party and a declared candidate for the office of United States Senator to be filled in the general election on November 5, 1974. He has received the designation of the State Committee of the Republican Party for such office and, as stated above, has purportedly also received the designation of the defendant State Committee.

11. Defendant John J. Chezzi is Secretary of State of the State of New York, and as such is a state official charged with the enforcement and execution of various provisions of the Election Law.

12. The Election Law provides three methods of designation by which a candidate can be named for party nomination to an office, such as that of U.S. Senator, to be filled by the voters of the entire state:

(1) By majority vote of the State Committee at a meeting held during a specified period preceding the primary election, the period this year being June 9 through June 15; sec. 131.2(b) (1);

(2) By receiving 25% or more of the total vote cast in the State Committee on any ballot at said meeting, and thereafter making a timely prescribed demand to the Secretary of State for entry of his name as a candidate for the nomination, sec. 131.2(b) (3); and

(3) By a designating petition signed by not less than 20,000 or 5% of the enrolled voters of the Liberal Party in the State, whichever is less, containing signatures of at least 100 residents from each of one-half of the Congressional districts of the State, sec. 136.5.

If only one person is designated for the office of United States Senator, and the office is "uncontested" as defined in sec. 3-a. of the Election Law, the person designated would be deemed nominated without balloting at the primary election, scheduled this year for September 10, 1974, sec. 149.

13. The three methods of designation are limited by the Wilson-Pakula Law, which imposes a general prohibition on the right to designate or nominate as a party candidate any person who is not enrolled as a

member of the party at specified times. Such enrollment is required, in the case of a designating petition, at the time of the filing of the petition, sec. 137.1; and in the case of a committee nomination, at the time of the filing of the certificate of nomination, sec. 137.2.

14. The effect of the foregoing provisions of sec. 137 upon a candidate for state-wide office who is not enrolled as a member of the party is to bar him from utilizing any of the three methods of designation listed in paragraph 12 above, except as the State Committee may authorize in accordance with a further provision of the Wilson-Pakula Law, next discussed.

15. The Wilson-Pakula Law provides for a waiver of its requirements, which in the case of a candidate for a state-wide office, may be authorized by the State Committee at a meeting, by a majority vote of those present at such meeting provided a quorum is present, sec. 137.4.

16. The effect of these provisions of the Wilson-Pakula Law is to vest in a majority of the State Committee the power to deny to non-member candidates the use of all three methods of designation, including the two methods which are not otherwise within the majority's power to withhold.

17. The waiver provisions of the Wilson-Pakula Law vest a further power in the majority of the State Committee to confer a designation and waiver upon one non-member candidate, and at the same time to preclude designation by either of the remaining two methods to all other non-member candidates, thus barring the other non-member candidates from a place on a ballot in the primary election scheduled for September 10, 1974, and denying to the enrolled members of the party any opportunity to choose among the non-member candidates.

18. When the foregoing power is exercised to designate one non-member candidate and exclude all other non-member candidates, the designation is virtually certain not to be contested, and is ordinarily tantamount to nomination, particularly if the non-member candidate is the designee or nominee of another party.

19. The foregoing powers over the designation and nomination of candidates which are theoretically vested in a majority of the State

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Committee, are highly susceptible of being controlled by a small group of one or more party leaders by means of the party's rules or custom or otherwise.

COUNT TWO

20. Plaintiffs reallege paragraphs 1 through 19 hereof.

21. As a matter of longstanding practice the foregoing powers over the designation and nomination of candidates have actually been and are now so controlled by defendant Rose alone or by defendant Rose and other Liberal Party leaders. This longstanding actual control, together with the other conduct of the party leaders described below, has deprived and is depriving plaintiffs and others, including members of the defendant State Committee and enrolled members of the defendant Liberal Party, of federally-protected rights with respect to the election of a United States Senator.

22. On several occasions prior to June 15, 1974, plaintiff Clark requested of defendants Harrington and Javits that the designation and nomination process of the defendant Liberal Party for the office of United States Senator, be open equally to all declared candidates, and that it not be a closed process limited only to defendant Javits, controlled by the dictates of the party leaders, without the party membership being permitted any choice. In particular, plaintiff Clark and members of his campaign staff requested that Plaintiff Clark, as well as all other candidates, be afforded equal treatment and access to the members of the defendant State Committee and the enrolled voters of the defendant Liberal Party, in order to acquaint them with the fact of his candidacy for the Liberal Party nomination and the positions he is advocating. These requests included, without limitation, that he be afforded an opportunity to appear before all of the individual clubs and before the defendant State Committee, that the individual clubs be permitted to vote on which candidate they prefer, and that he be provided with a list of the names and addresses of the members of the defendant State Committee so that they might be sent copies of a letter, dated May 21, 1974, from plaintiff Clark to defendant Harrington.

23. The foregoing requests were all either ignored or denied. Defendant Javits did appear at Liberal Party meetings to which other candidates, such as plaintiff Clark, were not even invited. The requested list of members of the defendant State Committee was not provided. It was said by defendant Harrington's office not to be available until "after the primary period." The designation process remained throughout a closed process, and the purported designation of defendant Javits was dictated by the party leaders. This conduct was wrongful and deprived plaintiffs and others of equal protection of the laws and other federally-protected rights with respect to the election of a United States Senator.

WHEREFORE, plaintiffs seek judgment:

- (1) declaring that the waiver provisions of the Wilson-Pakula Law and related other sections of the Election Law are unconstitutional,
- (2) declaring that the conduct of the party defendants complained of herein was wrongful and deprived plaintiffs and others of equal protection of the laws and other federally-protected rights with respect to the election of a United States Senator, and
- (3) declaring that the defendant State Committee's purported designation of defendant Javits is invalid, and enjoining defendants from taking any actions to process it further, and
- (4) for such other and further relief as to the Court may seem just and proper.

DATED: New York, N.Y.
June 17, 1974

Lawrence W. Schilling
Attorney For Plaintiffs
Office and P.O. Address
36 West 44th Street - Rm. 307
New York, N.Y. 10036
Tel: 869-3725

Of Counsel:

Ramsey Clark
37 West 12th Street
New York, N.Y. 10011
Tel: 989-6613

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAMSEY CLARK and
CHANDRA CARR,

Plaintiffs

- v -

ALEX ROSE et al.,

Defendants

ORDER TO SHOW CAUSE

74 Civ. 2598 (H.R.T., Jr.)

Upon the complaint in this action, filed on June 17, 1974, and the annexed affidavit of Lawrence W. Schilling, attorney for plaintiffs, and sufficient cause appearing therefore, it is hereby

ORDERED that defendants show cause, if any there be, before this Court, at Room 501, United States Court House, Foley Square, New York, New York, on the 3rd day of *July*, 1974, *at 1000 AM.* or as soon thereafter as counsel can be heard, why plaintiffs' application for the following relief should not be granted:

- HRT Jr*
- (1) for the convening of a three-judge court pursuant to 28 U.S.C. §§2281 and 2284 and the assignment of the action for trial "at the earliest practicable day," 28 U.S.C. §2284(4), and
 - (2) for an order pursuant to Fed.R.Civ.P. 25(d) substituting Arthur H. Schwartz, Remo J. Acito, William H. McKeon and Donald Rettaliata, as defendants in place and stead of the defendant Secretary of State, it appearing that the former are the four Commissioners who constitute the newly created State Board of Elections, and who upon their appointment and qualification subsequent to the commencement of this action succeeded to the latter's responsibilities

9a 3
for the enforcement and the execution of various provisions of the Election Law, and

- (3) for such other and further relief as to the Court may seem just and proper, and it is further

ORDERED that service of this order and the annexed affidavit shall be sufficient if copies thereof are delivered by hand within New York City and mailed elsewhere, by certified mail, on or before the 28th day of June, 1974, as follows:

HRT Jr

- (1) to each defendant named in the complaint at the address listed in the Designation Form filed with the complaint,
- (2) an additional copy to defendant Javits in care of Trubin, Sillcocks, Edelman and Knapp, 375 Park Avenue, New York, N.Y., 10022,
- (3) an additional copy to the defendant Liberal Party at its headquarters, 165 West 46 Street, New York, N.Y., 10036,
- (4) to Arthur H. Schwartz by delivery to his office at 445 Park Avenue, New York, N.Y., 10022, together with a copy of the complaint,
- (5) to Remo J. Acito by delivery to his office at 60 East 42 Street, New York, N.Y., 10017, together with a copy of the complaint,
- (6) to Donald Rettaliata by mail to his office at 285 West Main Street, Sayville, New York, 11782, together with a copy of the complaint,
- (7) to William H. McKeon by mail to his office at Metcalf Plaza, Auburn, New York, 13021, together with a copy of the complaint,

10a 3
(8) to the Attorney General of the State of New York, by
delivery to the office of Samuel A. Hirshowitz, First
Asst. Attorney General, 2 World Trade Center (47th floor),
New York, N.Y., 10047.

HRT Jr.

(9) In lieu of foregoing, counsel for one or more
of the aforementioned persons may accept said
service on their behalf

Dated: New York, New York
June 28, 1974

at 1214 PM

s/ H. R. Tyler Jr

Harold R. Tyler, Jr.
U.S.D.J.

11a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAMSEY CLARK and
CHANDRA CARR,
Plaintiffs

- v -

ALEX ROSE et al.,
Defendants

AFFIDAVIT

74 Civ. 2598 (H.R.T., Jr.)

STATE OF NEW YORK)
COUNTY OF NEW YORK :
SOUTHERN DISTRICT OF NEW YORK)

ss.:

Lawrence W. Schilling, being duly sworn, deposes and says:

1. I am attorney for plaintiffs in this action and submit this affidavit in support of plaintiffs' application: (1) for the convening of a three-judge court pursuant to 28 U.S.C. §§ 2281 and 2284, and the assignment of this action for trial at the earliest practicable day, and (2) for an order pursuant to Fed.R.Civ.P. 25(d) substituting the four Commissioners constituting the newly created State Board of Elections in place of and stead of the defendant Secretary of State, as is set forth more fully in paragraph 3 below. The affidavit is also submitted in support of 'plaintiffs' application to bring on these matters by an order to show cause.

2. Plaintiffs seek to proceed by order to show cause in order to expedite the final determination of their action and in order to seek the Court's direction as to the manner of service of the motion papers.

C Na J

3. This action was commenced on June 17, 1974. It seeks to invalidate the designation of defendant Jacob K. Javits purportedly made by the defendant State Committee of the Liberal Party on or about June 15, 1974, naming defendant Javits as its candidate for the defendant Liberal Party's nomination for the office of United States Senator.

4. One reason for proceeding by order to show cause rather than by notice of motion is to expedite plaintiffs' application for the convening of a three-judge court which in turn seeks to bring the action on for trial at the earliest practicable day. A speedy trial of this action is essential and feasible. The facts do not appear to be difficult or complex and seem likely to be largely, if not entirely undisputed.

5. The designation at issue in this action was made as part of the primary process for selecting party candidates for the general election on November 5, 1974. The timetable of events leading first to the primary election and then to the general election helps illustrate the need for a speedy trial of this action. Some of the principal dates and events as published by the Secretary of State are as follows (section references are to the New York Election Law):

June 9-15	Dates for holding State Committee meetings.
June 17	First day for signing designating petitions. §149-a, Subd. 2.
July 11 to July 15	Dates for filing designating petitions. §149-a, Subd. 4.
July 19	Last day to authorize designations. §149-a, Subd. 5.
July 19	Last day to accept or decline designations. §149-a, Subd. 6.
July 23	Last day to fill vacancy after declination. §149-a, Subd. 8.
August 13	Certification of Secretary of State, to Boards of Election, of designations filed in his office. §149-a, Subd. 10.

13a
Sept. 10 PRIMARY ELECTION.

6. The direction of the Court is being sought with respect to the manner of service of the papers on this motion. No notice of appearance or other papers constituting an appearance have yet been served upon my office by any of the defendants named in the complaint. All of these defendants were apprised of the filing of the action by telephone calls to their offices on June 18. Information copies of the summons and complaint were delivered to their offices on that date, except for the Secretary of State. An information copy of the summons and complaint was delivered to the Attorney General's office on June 19. Copies of the summons and complaint were delivered to the Marshal's office for service on June 19. The Marshal's offices in Manhattan and Utica have advised me by telephone that all defendants named in the complaint have been served to date, with the possible exception of defendant Javits.

7. The addresses at which service of these motion papers is proposed upon the defendants named in the complaint are the addresses at which the Marshal has effected or will effect service of the summons and complaint. It is also proposed to mail one additional copy to the headquarters of the Liberal Party for its convenience and another to the law firm of Trubin, Sillocks, Edelman and Knapp, which, I have been advised, is or will be representing defendant Javits.

8. Provisions for the creation of the State Board of Elections are contained in a recently enacted statute, Laws of 1974, Chap. 604. This bill was signed by the Governor on May 30. Sec. 21 of the bill provides it shall take effect on June 1, 1974, "but shall be deemed

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NOTARIAL PUBLIC STATE OF NEW YORK

to take effect immediately solely for the purposes of appointment of commissioners of the state board of elections ..." I've been advised by the Chairman, Arthur H. Schwartz, that the four commissioners were appointed by the Governor on June 18, and that they filed their oath of office on June 24. The addresses at which service of the motion papers upon the Commissioners is proposed were furnished by the Chairman at my request.

9. The proposed order to show cause also provides for service of a copy of the motion papers upon the Attorney General. This is proposed for his information since the Attorney General is not a party to this action. Of course, if a three-judge court is convened, 28 U.S.C. §2284(2) provides that notice of the hearing shall be given to the Governor and Attorney General of the State by registered or certified mail by the clerk.

10. No previous application has been made for similar relief.

5/

Lawrence W. Schilling

Sworn to before me
this 28 day of June, 1974.

Notary Public

GEORGE COHEN
Notary Public, State of New York
No. 31-0682100
Qualified in New York County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAMSEY CLARK and CHANLERA CARR,

Plaintiffs,

-against-

MEMORANDUM

74 Civ. 2593 HRF

ALEX ROFF, EDWARD SYANTLO HARRINGTON,
THE FEDERAL PARTY OF THE STATE OF NEW
YORK, THE STATE EXECUTIVE COMMITTEE,
JACOB K. JAVITS and ARTHUR H. SCHWARTZ,
REMO J. ACITO, WILLIAM H. McKELON and
DONALD PETRALIATA as members of the State
Board of Elections,

Defendants.

TYLER, D.J.

On July 1, 1974, this court was presented with an order to show
cause which sought the convening of a three-judge court and the early
assignment of the action for hearing pursuant to 28 U.S.C. §§ 2261
and 2264. ^{1/} Briefs were received and oral argument was heard on
July 3, 1974. For reasons hereinafter stated, plaintiffs' application

for the convening of a three-judge court is granted.

In count 1 of their complaint, plaintiffs seek to set aside the designation of Jacob K. Javits as the candidate of the Liberal Party for United States Senator in the general election scheduled for November 5, 1974. They have argued that the waiver provision of the Wilson-Tekula Law, N.Y. Election Law § 137(4) (McKinney), ^{-2/} by which Javits secured the designation is unconstitutional. As plaintiffs have pointed out in their complaint, there are three basic methods under New York law by which a candidate may secure the nomination of a party to an office, including a federal office such as that of Senator. One method is by receiving the majority vote of the State Committee. § 131(2)(b)(1). Another is by receiving twenty-five percent or more of the vote cast by the State Committee and then making the prescribed demands. § 131(2)(b)(3). The third is by a designating petition signed by a certain number of enrolled members of the particular party in question. § 136(5). Section 137 prevents non-members from using any of these methods, except that subsection 4 thereof permits the State Committee to waive the membership requirement.

Plaintiffs argue that the effect of the above mentioned provisions of the Wilson-Takala Law is to permit the State Committee to waive membership requirements for one candidate, while "at the same time to preclude designation by either of the remaining two methods to all other non-member candidates, thus barring the other candidates from a place on a ballot in the primary election scheduled for September 10, 1974, and denying to the enrolled members of the party an opportunity to choose among the non-member candidates." Complaint ¶ 17.

In the second count, it is alleged that the refusal of the Liberal Party to afford access to its individual clubs and its State Committee to candidates other than Javits deprived plaintiffs of equal protection and other federally protected rights.

Under 28 U.S.C. § 2281:

"An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title."

Defendants have argued that a three-judge court is not required since no injunction against any state officer literally has been sought in the complaint as presently drafted. At oral argument and in their brief, however, plaintiffs requested that the State Board of Elections be enjoined from processing the designation of Javits as candidate of the Liberal Party. They also suggested that, if the designation of Javits is invalidated, additional injunctive relief may be appropriate. Thus, in the present posture of the case, it may be necessary to enjoin state officials if the designation of Javits is to be invalidated on the ground that it was made pursuant to an unconstitutional state statute. See, generally, *Gray v. Sanders*, 372 U.S. 368 (1963); *Cook v. Alexander*, 311 U.S. 642 (1941).

In a case such as this one which calls for expedited procedure, it would be a waste of valuable time to delay the empaneling of a three-judge court until plaintiffs have filed an amended complaint. The complaint therefore will be deemed to be amended to include the relief sought in plaintiffs' brief.

Defendants have also argued that a three-judge court is not necessary because the constitutional issue raised in the complaint is not substantial. In *Goehry v. Onger*, 409 U.S. 512, 518 (1973), the

Supreme Court defined constitutional insubstantiality very narrowly.

It said:

"Title 28 U.S.C. § 2281 does not require the convening of a three-judge court when the constitutional attack upon the state statute is insubstantial. 'Constitutional insubstantiality' for this purpose has been equated with such concepts as 'essentially fictitious', Ballou v. Baltimore, 369 U.S. at 33, 'wholly insubstantial', Id., 'obviously frivolous', Harold Distilling Co. v. Baltimore, 315 U.S. 235, 233 (1940), 'obviously without merit', Ex parte Forsyth, 290 U.S. 30, 32 (1933). The limiting words 'wholly' and 'obviously' have cogent legal significance. In the context of the effect of prior decisions upon the substantiality of constitutional claims, those words import that claims are constitutionally insubstantial only if the prior decisions inescapably render the claims frivolous; previous decisions which merely render claims of doubtful or questionable merit do not render them insubstantial for the purposes of 28 U.S.C. § 2281. A claim is insubstantial only if 'its ungroundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the question sought to be raised can be the subject of controversy.' Ex parte Forsyth, supra at 32...."

In 1947, the New York Court of Appeals affirmed without opinion four Supreme Court decisions which had upheld the constitutionality of the Wilson-Pakula Laws: Singer v. Hafferman, 297 N.Y. 526, 74 N.E.2d 466 (1947); Ingersoll v. Hafferman, 297 N.Y. 524, 74 N.E.2d 466 (1947); Ingersoll v. Curran, 297 N.Y. 522, 74 N.E.2d 465 (1947); Powers v. Donohue, 297 N.Y. 521, 74 N.E.2d 465 (1947). The statute in these

cases, however, apparently was not attacked on the same grounds as are presented in the instant case. What plaintiffs are objecting to here is that one non-party member is being given preference over another. In the New York cases, the plaintiffs were objecting to the provisions of the Williams-Elford Law which barred all non-party members from becoming candidates. Moreover, the law concerning the nomination of candidates by political parties has changed somewhat in the last twenty-seven years. Cf. Storer v. Brown, U.S. _____, 945 Ct. 1274 (1974). It cannot be said, therefore, that prior decisions have totally foreclosed the issues presented here.

Accordingly, since the conditions for the convening of a three-judge court have been met, at least as far as the first count of the complaint is concerned, plaintiffs' motion to convene a three-judge court is granted. ^{3/} Because of critical time problems adverted to by the parties, counsel are directed to be ready to proceed to hearing before the panel upon 48 hours' notice. A copy of this memorandum and a request for issuance of an appropriate order are being sent to the Chief Judge of this circuit.

It is so ordered.

Dated: July 11, 1974

U.S. D.J.

FOOTNOTES1/

The order also sought the substitution of certain defendants. This substitution was not opposed and was accordingly granted on July 3.

2/

The first three provisions of § 137 limit the ability of the political parties to designate candidates who are not enrolled as members of the party in question as of a certain time. Subsection 4, however, provides that:

"Notwithstanding the provisions of subdivisions one, two and three of this section, at a meeting of the members of the party committee representing the political subdivision of the office for which a designation or nomination is to be made, or of such other committee as the rules of the party may provide, ... by a majority vote of those present at such meeting provided a quorum is present, such committee may authorize the designation or nomination of a person as candidate for any office who is not enrolled as a member of such party as provided in this section...."

3/

Count 2 of plaintiffs' complaint seems to state that the statute is being administered in an unconstitutional way. Such a claim, however, does not require the convening of a three-judge court. Milligan v. United States, 312 U.S. 246 (1941); Agur v. Wilson, Docket No. 73-1529 (2d Cir. filed May 24, 1974); Galvan v. Lavino, 490 F.2d 1255 (2d Cir. 1973). It could be argued that this court should defer convening a three-judge court until after it has decided the issues raised in plaintiffs second count. See, Hacana v. Lavino, _____ U.S. 94 S.Ct. 1372 (1974); Taylor v. Lavino, Docket Nos. 72-2731, 72-2571 (2d Cir. filed May 14, 1974). In the present case, however, such a course would seem inefficient for two reasons: (1) the tight time deadline; and (2) the dubious merit of the second stated claim.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAMSEY CLARK and CHANDRA CARR,

Plaintiffs,

-v-

74 Civ. 2598

ALEX ROSE, DONALD SZANTHO HARRINGTON,
THE LIBERAL PARTY OF THE STATE OF
NEW YORK, THE STATE COMMITTEE OF THE
LIBERAL PARTY, THE STATE EXECUTIVE
COMMITTEE, JACOB K. JAVITS and JOHN
J. GHEZZI, as Secretary of State of
the State of New York,

Defendants.

ANSWER

Defendants Rose, Harrington, The Liberal Party
of the State of New York, the State Committee of the Liberal
Party and the State Executive Committee (hereinafter the
"Liberal Party defendants") by their attorneys, Herzfeld &
Rubin, P.C., answering the complaint herein, allege upon
information and belief as follows:

COUNT ONE

1. Deny each and every allegation set forth in
paragraphs 1 and 2 except deny knowledge or information suff-
icient to form a belief with respect to the allegations as
to the nature of the relief sought.

2. Deny knowledge or information sufficient to
form a belief with respect to the allegations set forth
in paragraph 3.

3. Deny knowledge or information sufficient to form a belief with respect to paragraph 4 except admit that plaintiff Carr is an enrolled member of the Liberal Party and the district leader of the 62nd Assembly District.

4. Deny paragraph 5 except admit that defendant Rose is a Vice Chairman of the Liberal Party of the State of New York.

5. Answering paragraph 7, defendants allege that the State Committee of the Liberal Party is a duly elected body and leave to the Court a determination as to the interpretation of the Election Law.

6. Answering paragraphs 12, 13, 14, 15, 16 and 17, the Liberal Party defendants leave to the Court a determination of the legal interpretation of the allegations therein contained.

7. The Liberal Party defendants are unable to answer the allegations set forth in paragraph 18 because of lack of clarity of the pleading and accordingly deny the allegations.

8. Deny each and every allegation set forth in paragraph 19.

COUNT TWO

9. The Liberal Party defendants repeat and reiterate each and every allegation, denial and admission set forth in paragraphs 1 through 8 hereof with the same force and effect as though fully set forth herein.

10. Deny each and every allegation set forth in paragraph 21.

11. Deny each and every allegation set forth in paragraphs 22 and 23 except admit that there was an exchange of writings between plaintiff Clark and defendant Harrington, and these defendants refer to their contents for the terms and conditions thereof.

AS AND FOR A FIRST SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE

12. This Court lacks jurisdiction over the subject matter set forth in the complaint.

AS AND FOR A SECOND SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE

13. The complaint fails to state a cause of action against the Liberal Party defendants upon which this Court can grant relief.

AS AND FOR A THIRD SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE

14. The subject matter of the complaint is moot.

WHEREFORE, the Liberal Party defendants pray for judgment dismissing plaintiffs' complaint as against them together with the costs and disbursements of this action.

HERZFELD & RUBIN, P.C.

By: Is/ [Signature]
a member of the firm

Attorneys for Defendants Alex Rose,
Donald Szanthe Harrington, the Liberal
Party of the State of New York, the
State Committee of the Liberal Party
and the State Executive Committee

40 Wall Street
New York, N.Y. 10005
344-0580

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
RAMSEY CLARK and CHANDRA CARR, :

Plaintiffs, :

- against - :

74 Civ. 2598

ALEX ROSE, DONALD SEANTHO
HARRINGTON, THE LIBERAL PARTY OF
THE STATE OF NEW YORK, THE STATE
COMMITTEE OF THE LIBERAL PARTY,
THE STATE EXECUTIVE COMMITTEE,
JACOB K. JAVITS and JOHN J. GHEZZI,
as Secretary of State of the State
of New York, :

Defendants. :
-----X

LOUIS J. LEFKOWITZ, Attorney General of the State of
New York, appearing herein pursuant to the provisions of Execu-
tive Law, § 71 and CPLR, § 1012-b, in answer to the complaint
herein, alleges:

FIRST: Denies any knowledge or information sufficient
to form a belief as to the allegations of paragraphs 1, 3, 4, 5,
8, 9, 14, 16, 17, 18, 19, 20, 21, 22 and 23 except that as to
statutory provisions specified in said paragraphs, he refers to
the terms of said provisions.

SECOND: Denies that the original defendant, Ghezzi,
or the proposed substituted defendants, the State Commissioners
of Election, perform any discretionary function in connection
with the selection of the candidate of the Liberal Party for the
office of United States Senator.

THIRD: Denies that the provisions of Election Law,
§ 137.4, are unconstitutional.

WHEREFORE, Judgment is prayed for dismissal of the complaint herein; and, further, that judgment be granted herein declaring that Election Law, § 137.4 (the Wilson-Takula Law) be declared constitutional.

Dated: New York, New York
July 2, 1974

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Appearing herein as Attorney
for defendant John J. Ghezzi,
Secretary of State of the
State of New York; and pro
se, pursuant to Executive
Law, § 71 and CPLR, § 1012-a
Office & P. O. Address
Two World Trade Center
New York, New York 10047
Tel. (212) 488-3446

Rev'd
7-17-74

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x	
RAMSEY CLARK and	:
CHANDRA CARR,	:
	:
Plaintiffs,	:
	:
-against-	:
	:
ALEX ROSE, DONALD SZANTHO HARRINGTON,	:
THE LIBERAL PARTY OF THE STATE OF	:
NEW YORK, THE STATE EXECUTIVE COM-	:
MITTEE, JACOB K. JAVITS and ARTHUR H.	:
SCHWARTZ, REMO J. ACITO, WILLIAM H.	:
McKEON and DONALD RETTALIATA as	:
members of the State Board of	:
Elections,	:
	:
Defendants.	:
----- x	

74 Civ. 2nd 98
(H.R.T.)

ANSWER OF
JACOB K. JAVITS

Defendant, JACOB K. JAVITS, by his attorneys, Trubin
Sillcocks Edelman & Knapp, for his answer alleges upon informa-
tion and belief as follows:

COUNT ONE

- 1) Denies each and every allegation set forth in
paragraphs "1" and "2" of the Complaint.

- 2) Denies having knowledge or information sufficient
to form a belief as to the truth of each and every allegation set
forth in paragraphs "3" and "4" of the Complaint.

- 3) Denies having knowledge or information sufficient
to form a belief as to the truth of each and every allegation

set forth in paragraph "5" of the Complaint except admits that the defendant, Alex Rose, is a Vice Chairman of the Liberal Party of the State of New York.

4) Denies having knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraphs "7" and "8" of the Complaint except admits that the defendant, State Committee of the Liberal Party, is a duly elected body.

5) Answering paragraphs "12"; "13"; "14"; "15"; "16" and "17" of the Complaint, the defendant Javits leaves to the Court a determination of the legal interpretation of the allegations contained therein.

6) Denies having knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraphs "18" and "19" of the Complaint.

COUNT TWO

7) In answering paragraph "20" of the Complaint, repeats and realleges the allegations set forth in paragraphs "1" through "6" of the Answer with the same force and effect as if herein set forth at length.

8) Denies having knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraphs "21", "22" and "23" of the Complaint except

admits that there was an exchange of correspondence between plaintiff Clark and defendant Javits.

FIRST DEFENSE

The Complaint fails to state a claim against defendant Javits upon which relief can be granted.

WHEREFORE, defendant Javits demands judgment dismissing the Complaint with costs.

TRUBIN SILLCOCKS EDELMAN & KNAPP

By _____

A Member of the Firm
Attorneys for Defendant,
Jacob K. Javits,
Office and P. O. Address,
375 Park Avenue,
New York, N.Y. 10022,
Tel.: (212) 759-5400

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CMP

RAMSEY CLARK and CHANDRA CARR

vs

74 Civil 3598 (HRT)

ALEX ROSE et al.,

New York, N. Y.

July 17, 1974 - 3:45 p.m.

Before

HON. WALTER R. MANSFIELD, Circuit Judge

HON., HAROLD R. TYLER, JR., District Judge

HON. CHARLES L. BRIEANT, District Judge

- - -

THE CLERK: Ramsey Clark and Chandra Carr against
Alex Rose and others.

Are the plaintiffs ready?

MR. SCHILLING: Plaintiffs are ready.

THE CLERK: Are the defendants ready?

MR. RUBIN: Ready.

MR. SANDLER: Yes, your Honor.

JUDGE MANSFIELD: Well, ladies and gentlemen,
before we proceed, I think we ought to note for the record
a few things.

First of all, are all parties here and represented,
or are there some named who are not here?

MR. SANDLER: If your Honor please, Senator Javitz
was last served, and we have now served our answer. We are

1 CMP 2

2 here.

3 JUDGE MANSFIELD: I see.

4 Are there any disputed issues of fact, or at least
5 any disputed issues of fact that are material and relevant to
6 the question of constitutionality of this being argued?

7 MR. SCHILLING: Your Honor, I would say that in all
8 likelihood there are not. We have not pinned it down, how-
9 ever, and I was' would to suggest that perhaps we could explore
10 that today.

11 We have an outline of the facts that we believe are
12 material to the first count, and I think that it would be
13 possible on a recitation of those facts to discover to what
14 extent if at all they are disputed.

15 We received, shortly before this hearing convened,
16 in addition to the answer of defendant Javitz, a memorandum
17 from the Liberal Party which does contain some factual con-
18 tentions that suggest perhaps there may be some factual dis-
19 putes.

20 JUDGE MANSFIELD: Well, it is not the kind of a
21 dispute, is it, that is going to bear on the issues which will
22 be argued today?

23 MR. SCHILLING: It may have some bearing. I think
24 it won't change their shape drastically, certainly not.

25 JUDGE MANSFIELD: Well, this hearing was scheduled

1 CMP 3

2 today by this Court after the case was initiated and assigned
3 to Judge Tyler because of the emergency nature of the relief
4 that was sought. So we will proceed unless there are parties
5 here who say that there are issues of fact that must be de-
6 termined before the issues that are to be argued can be
7 argued.

8 MR. SCHILLING: Well, we would suggest in addition,
9 though, your Honor, that it might be desirable if additional
10 time were spent exploring not only the factual issues but
11 the constitutional issues that are involved here. We under-
12 stood that perhaps the first order of business today would be
13 to consider what the earliest practicable day for trial of
14 this action --

15 JUDGE TYLER: Now, sir, that is not the position
16 you took before me as a single Judge at all. Indeed, ex-
17 pressly you conceded that the only factual issues had to do
18 with what you and all the parties and this Judge agreed was
19 a pendant issue.

20 MR. SCHILLING: I think that is correct, your
21 Honor, except that --

22 JUDGE TYLER: I don't think we can ride both horses
23 here. It sounds to me a little bit wobbly.

24 MR. SCHILLING: There may be some dispute as to
25 what happened at the State Committee meeting on June 15th.

1 CMP 4

2 I don't know for a fact that that is the case.

3 JUDGE TYLER: Well, you have a claim here, as I
4 understand it, that this section of the law involved is un-
5 constitutional. Now, I thought that we all agreed that you
6 wanted to get at that without delay, and you remember I
7 expressly accepted your position on that matter, and I feel
8 that it is incumbent upon you to get to it. I don't under-
9 stand how in the world we can sit around here and say, "Well,
10 there may be something about some meeting." I don't under-
11 stand that at all. That is not raised in your original papers.
12 Certainly, you never took that position when you moved this
13 Court to convene a statutory court.

14 MR. SCHILLING: Well, I didn't mean to say, your Honor
15 if I did say it at the time, that I was sure to a certainty
16 that there would not be disputes as to the details of what
17 took place at that State Committee meeting. I still don't
18 mean to say that there is a substantial dispute.

19 JUDGE MANSFIELD: Well, why don't you go forward,
20 then, with your argument directed towards your contention
21 with respect to the constitutionality, and we will treat it
22 as a claim that can be -- or a contention that can be adjudi-
23 cated without the necessity of calling new additional facts
24 up. But if it turns out otherwise, we can decide then what
25 action we will take.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAMSEY CLARK and CHANDRA CARR,
Plaintiffs

- v -

74 Civ. 2598 (H.R.T.)

ALEX ROSE et al.,
Defendants

In accordance with leave of the Court, plaintiffs submit the following correspondence:

Letter dated May 21, 1974 from Ramsey Clark
to Donald Harrington A

Letter dated May 21, 1974 from Ramsey Clark
to Senator Jacob Javits B

Letter dated June 10, 1974 to Ramsey Clark
from Donald Szanthy Harrington C

Letter dated June 10, 1974 to Ramsey Clark
from Jacob K. Javits D

Letter dated June 11, 1974 from Ramsey Clark
to Donald Harrington E

Letter dated June 11, 1974 from Ramsey Clark
to Senator Jacob Javits F

Letter dated June 13, 1974 from Ramsey Clark
to Senator Jacob Javits G

Letter dated June 13, 1974 from Ramsey Clark
to Donald Harrington H

Letter dated June 18, 1974 to Ramsey Clark
from Donald Szanthy Harrington I

Dated: July 18, 1974

Lawrence W. Schilling
Lawrence W. Schilling
Attorney for Plaintiffs
36 West 44th Street
New York, N.Y. 10036

May 21, 1974

Rev. Donald Harrington
Chairman
The Liberal Party of New York State
165 West 46 Street
New York, New York 10036

Dear Rev. Harrington:

As you may know, I am a candidate for the U.S. Senate. I am a registered Democrat, and will enter the Democratic primary.

Mr. Alex Rose, a Vice-Chairman of the Liberal Party, has made statements which the New York Times has characterized as "tantamount to (Liberal Party) endorsement" of Jacob Javits, the incumbent and a registered Republican, for the Liberal Party nomination for the U.S. Senate. If that is true, then of course the Liberal Party primary is a sham and mocks democracy in its hour of greatest need.

If it is true that only Senator Javits will be placed on the Liberal Party primary ballot by your State Committee, it remains an outrageously unfair and undemocratic discrimination against your party membership, who are not permitted a free choice, and the voting public, which has its vote diluted by boss-dictated delivery of tens of thousands of votes to a candidate not chosen by the people. It is also unfair to me, because I believe there are tens of thousands of members in your party who would like to vote for me, but want to vote in the Liberal Party. It is, further, a dangerous method of dealing, which leads to corruption.

Therefore, if Senator Javits is entered in the Liberal Party primary, I ask for equal treatment. This is obviously an essential right if there is to be integrity in elections in New York State.

Understand, I ask and will accept only equal treatment. I will not accept your party designation unless chosen by the people in a free and open primary.

Unless the State Committee of the Liberal Party opens the party primary to candidates other than Senator Javits, then the Liberal Party endorsement is merely a dictated designation -- not the democratic decision of the membership.

Rev. Donald Harrington

-2-

May 21, 1974

I hope the Liberal Party will live up to its name and not stand for this.

I ask you and all in the Liberal Party who believe in democracy and representative government, to insist that the party designation be the free and open choice of the membership. Toward that end, I urge the Liberal Party to extend the courtesy of a forum for all candidates for the office of U.S. Senator and invite them to appear before all its individual clubs and before its State Committee. I further request that the individual clubs be permitted to vote on which candidate they prefer. Only in this manner can a true choice of the Liberal Party enrollees be determined. We can't ask the people to have faith in our system when a single person or a handful in effect control tens of thousands of votes.

We live in a time of moral crisis. Integrity in government and politics is of paramount importance. I ask you to renounce the politics of manipulation, to help overcome the cynicism and despair that nearly overwhelms us, and open your party to all its people.

Sincerely,

Ramsey Clark

Copies to: Mr. Al~~an~~ Rose
Senator Jacob Javits
State Committee, Liberal Party

May 21, 1974

Senator Jacob Javits
326 Senate Office Building
Washington, D.C. 20510

Dear Senator Javits:

I am enclosing a copy of a letter I have mailed today to Rev. Donald Harrington, State Chairman of the Liberal Party. I hope you will join me in calling for an open and fair Liberal Party primary, and in repudiating any support which comes about as a result of political manipulation and power-brokering.

Will you join me in asking that the State Committee of the Liberal Party hear all candidates, that the Liberal Party invite all candidates to address all of its clubs and allow its enrollees to express their preference through club votes?

I look forward to hearing from you.

Sincerely,

Ramsey Clark

THE COMMUNITY CHURCH OF NEW YORK

June 10, 1974

The Honorable Ramsay Clark
345 Park Avenue
New York, N. Y. 10022

Dear Mr. Clark:

Thank you for your letter of May 21st.

I think, from the tone of your letter, that perhaps you did not realize that Senator Javits has had Liberal Party support almost from the time he entered the political arena in the 1940's. He was first elected to Congress by the margin of his vote on the Liberal Party line. He is our incumbent Senator.

It has been our practice in the past to support for re-election incumbent Liberal Party candidates who have served us well, enjoy wide support within the party, and who request our support for re-election.

On June 5th we held a meeting of the majority caucus of the Party to hear a report from Senator Javits on his stewardship in the Senate and to consider whether we should continue to support him or hear additional candidates. By an overwhelming majority, (there were only two dissenting votes), the five hundred and forty six delegates voted that we should continue to support Senator Javits. This is its recommendation to the Liberal Party State Committee.

The final decision, of course, must be made by the State Committee, a representative body from all over New York State duly elected by our Liberal Party voter-enrollees. Its decision will be a democratic one.

With all good wishes, I remain,

Yours sincerely,

Donald Szantho Harrington
Donald Szantho Harrington

DSH:ew

"Swords into Plowshares"

Isaiah 11: IV

DONALD SZANTHO HARRINGTON
Minister

FELIX DANFORD LION
Associate Minister

ALAN L. EGLY
Minister of Education

VILMA SZANTHO HARRINGTON
Minister to College Students

NATHANIEL WHITE
Church Administrator

ARTHUR FRANTZ
Director of Music

SAMUEL R. POINSETTE
Outreach Director



39a

JACOB K. JAVITS
110 EAST FORTY-FIFTH STREET
NEW YORK, N. Y. 10017

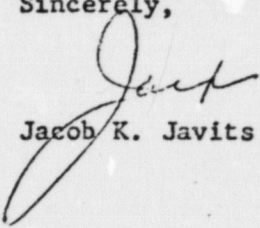
June 10, 1974

Dear Ramsey:

I have received your letter of May 21 and the copy of your letter to Dr. Harrington sent to Liberal Party Headquarters in New York City.

As I am sure you know the Liberal Party must decide, under its own rules and procedures, whether anyone not a member of that party will be allowed to stand in its primary; and this, of course, is also applicable to my possible nomination since I am an enrolled Republican as well as to others not belonging to the Liberal Party.

Sincerely,



Jacob K. Javits

Ramsey Clark, Esq.
Suite 1230
295 Madison Avenue
New York, New York 10017

D

June 11, 1974

Reverend Donald Harrington
Chairman
The Liberal Party of New York State
165 West 46 Street
New York, N.Y. 10036

Dear Reverend Harrington:

Since you have not answered my letter of May 21, 1974, I hereby renew my request that the Liberal Party open its primary to all candidates. I do this because you apparently intend to force boss-determined designations by your party. When a member of my staff called your office and asked for a list of your State Committee members so that we might send them a copy of my letter to you, he was told that copies would not be available until "after the primary period". I read in the New York Times (June 4, 1974) that the Liberal Party is having meetings at which Senator Javits has appeared but to which other candidates, such as myself, have not even been invited.

This makes a mockery of democratic procedure and confirms the original suspicion that the Liberal Party endorsement is merely a dictated designation -- not the democratic decision of the membership. In this year of Watergate, I urge you to insist on fairness and democratic principles.

I ask you once again to renounce the politics of manipulation, to help overcome the cynicism and despair that nearly overwhelms us, and open your party to all its people.

Sincerely,

Ramsey Clark

Copy to: Senator Jacob Javits

41c

June 11, 1974

The Hon. Senator Jacob Javits
326 Senate Office Building
Washington, D.C. 20510

Dear Senator Javits:

I read in the press that you and you alone are to be considered by the Liberal Party again this year. As you know, I have asked the Liberal Party to open its primary to all who choose to run and let the people decide. I ask you now in this year of Watergate to join in a rededication to fair democratic process. Surely, you agree that it would be a moral outrage to every citizen in New York to permit one person, or a handful, in effect, to cast tens of thousands of votes. Yet, this is precisely what the exclusive, boss-controlled Liberal Party designation does. I ask you to demand of the Liberal Party that it open up its primary. If it refuses, in the name of democracy and integrity in American politics, you should refuse to accept it.

Sincerely,

Ramsey Clark

F

June 13, 1974

.. Senator Jacob K. Javits
110 East 45th Street
New York, New York 10017

Dear Senator Javits,

Thanks for your letter of June 10, 1974. I received it on June 12; the day after mailing my letter of June 11, to you.

Of course, the Liberal Party will decide under its own rules, or otherwise, "whether anyone not a member of that party will be allowed to stand in its primary..." But anyone who is placed on that ballot by a discriminatory method must decide whether to accept the fruits of such a method. In this year of Watergate all who want to help overcome cynicism and apathy and restore faith in democracy and respect for government must act with high fidelity to principle and integrity. I will do this and act to reform undemocratic processes. I hope you will too.

.. I urge you to reject any discriminatory or unconstitutional process that might give you an unfair and undemocratic advantage at the expense of our American system and the voter.

Sincerely,

Ramsey Clark

June 13, 1974

Reverend Donald Harrington
40 E. 35th Street
New York, New York 10016

Dear Reverend Harrington,

Thank you for your letter of June 10 which I received on June 12, the day after mailing my letter of June 11.

Nothing you have said changes the outrageously undemocratic nature of the Liberal Party's nominating procedure. How can the fact that Senator Javits has received "Liberal Party support almost from the time he entered the political area in the 1940's" justify the Party's refusal to hear or consider other candidacies now? Democracy involves the testing of every idea and personality in the marketplace of public opinion. Are you unwilling to concede the possibility that some new thought or individual might be worthy of consideration? Your majority caucus as you call it did not include 1/10 of 1% of your registration. Surely it can constructively urge its views on the total enrollment. But its views be worth more than the care with which it has considered all choices? And surely, too, the people should decide.

You suggest the State Committee's decision "will be a democratic one." By definition, this is not so. It could be representative, but you and I know that even this is not so. Further, you have not permitted me, and presumably others, to speak or otherwise to communicate with your State Committee, your clubs or enrollment or even obtain the State Committee membership list. Finally yours cannot be an informed decision unless it has heard all candidacies. This has not been done. I believe it is immoral for any candidate to accept your nomination under these circumstances.

Your conduct affects the general election and the public generally, not just the Liberal Party. As you

point out, Senator Javits "...was first elected to Congress by the margin of his vote on the Liberal Party line." If a handful of people in the Liberal Party those many years ago had chosen the Democrat, or someone else, to place on the Liberal Party line, the outcome would have been changed. No wonder the public is cynical. What a mockery that process makes of the cherished principle of one person, one vote.

When you choose to endorse the nominee of another party, in this case apparently the Republican nominee and incumbent Senator, Jacob Javits, without affording others from other parties equal access to your people or your ballot, without permitting your total enrollment to decide, you engage in the very sort of power broking undemocratic activity that is destroying democracy in America. Despite your assertion that Senator Javits is your "incumbent Senator," he is not. He is a registered Republican. Your party merely afforded him another line on the ballot, by the choice of a handful of people, which then deprived those loyal to your party of a free choice and demeaned the equal worth of every vote cast, by arbitrarily forcing tens of thousands of Liberals and others to abandon the Liberal line if they want to vote for someone other than the choice dictated there..

In my judgment this procedure and your conduct violates important principles of democracy and valuable constitutional rights. All who have worked for the promise of equal protection of the laws contained in the 14th Amendment and believe Senators should be "Elected by the people" as presented in the 17th Amendment, should reject this course of action. I feel a responsibility to help reform our political system and will act accordingly.

If in this year of Watergate individuals and organizations do not act with integrity, what hope do our children have to live in democracy?

If you are willing to discuss this, please call me at 939-6613 here in the City, or at 716-286-9739 in Niagara Falls where I will be attending the Democratic Convention through Friday night.

Sincerely,

Ramsey Clark

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THE COMMUNITY CHURCH OF NEW YORK



"Swords Into Plowshares"
Isaiah 11: IV

DONALD SZANTHO HARRINGTON
Minister

FELIX DANFORD LION
Associate Minister

ALAN L. EGLY
Minister of Education

VILMA SZANTHO HARRINGTON
Minister to College Students

NATHANIEL WHITE
Church Administrator

ARTHUR FRANTZ
Director of Music

SAMUEL R. POINSETTE
Outreach Director

June 18, 1974

The Honorable Mr. Ramsay Clark
37 West 12 Street
New York, N.Y. 10011

Dear Mr. Clark:

What you are calling for in your June 13th letter to me is for open access to the Liberal Party Primary for all candidates of other parties who may wish to enter the Liberal Party Primary. You say we must do this or we are undemocratic. I can only reply that when the Democratic Party will open its Primary to our Liberal Party candidates, then I will ask that our Primary be opened to Democratic Party candidates. You are not calling for the democratization of the Liberal Party, but for its destruction. No, thank you. The Liberal Party Primary is open to all enrolled Liberals and to such others as the State Executive Committee may permit.

Let the primaries of all of the parties be opened to candidates of all of the parties, and I will urge the Liberal Party to support that position, though in that kind of free-for-all obviously minority parties, with so much smaller resources in money and man-power, would still have an immense disadvantage.

I thought your address to the Community Church on Amnesty truly great.

Yours sincerely,

Donald Szantho Harrington
Donald Szantho Harrington

DSH:ew

Revd by
mail 7-22-74

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
RAMSEY CLARK and
CHANDRA CARR,

Plaintiffs,

- v -

ALEX ROSE, DONALD SZANTHO HARRINGTON,
THE LIBERAL PARTY OF THE STATE OF NEW
YORK, THE STATE COMMITTEE OF THE LI-
BERAL PARTY, THE STATE EXECUTIVE COM-
MITTEE, JACOB K. JAVITS and JOHN J.
GHEZZI, as Secretary of State of the
State of New York,

Defendants.
-----X

AFFIDAVIT

74 Civ. 2598 (H.R.T.)

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

HERBERT RUBIN, being duly sworn, deposes and says:

1. I am one of the attorneys for defendants Alex Rose, Donald Szantho Harrington, the Liberal Party of the State of New York, and the State Executive Committee. This affidavit is submitted at the request of the Court with respect to items specified by the Court. It is, therefore, limited to those items.

2. By reason of the necessity for an expedited response, the affidavit is prepared by me rather than by one of the defendants. The information contained in the affidavit relating to occurrences at the meeting of the New York Liberal Party State Committee on June 15, 1974, is based upon information supplied by Mr. Ben Davidson, Executive Secretary of the New York State Liberal Party, who took the minutes of

the meeting. I was personally present on that occasion as chairman of the Law Committee and I confirm that said statements are in accordance with my recollection.

3. The State Committee meeting was held at the Americana Hotel. It was chaired by Dr. Harrington, the State Chairman. The meeting of the State Committee took place to designate and nominate candidates pursuant to section 131 of the Election Law. After nominations had duly been made for candidates for Governor, Lieutenant Governor, Attorney General, Controller, and Judges of the New York State Court of Appeals, the chairman asked for nominations for the office of United States Senator. Mr. Greenspan nominated Sen. Javits in a speech of less than three minutes. The nomination was duly seconded. Mr. Gressey nominated Mr. Lowenstein in a speech of less than three minutes. That nomination was duly seconded. Mr. Merrill nominated Mr. Clark in a speech of less than three minutes and that nomination was likewise seconded. The nominations were then closed and a vote was taken. Sen. Javits received 193,601 votes, Mr. Lowenstein received 8,022 1/2 votes and Mr. Clark received 19,925 1/2 votes. There were 4600 1/2 abstentions. Mr. Javits was declared to be the nominee of the Liberal Party. The comment was made that each of the other candidates had received less than 10% of the vote.

4. Thereafter Mr. Merrill was given the floor. He made a motion to the effect that any candidate not enrolled in the Liberal Party who obtains sufficient signatures through the petition route for nomination for the position of United States Senator should be accorded the right to enter the Liberal Party primaries. No written text of the resolution was offered as part of the record and none is in the possession of Mr. Davidson.

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On a vote thereafter taken, the motion was defeated by a vote of 180 against and 19 for.

5. The State Committee is provided for under section 11 of the New York State Election Law. Members of the State Committee are elected under section 13 of the New York State Election Law which provides that they shall be elected at primary elections to be held biannually in each even numbered year. Section 17 of the New York State Election Law provides for the filling of vacancies in state committees.

6. Members of the State Committee, as persons to be elected for "party positions", are nominated for election at the primary election under New York State Election Law section 136. That section provides that, similar to the nominations of persons for public office, persons standing for election to party positions, in this case, state committeemen, must file a petition in the form and corresponding to the requirements set forth in section 136. Subdivision 6 specifies that petitions be signed by not less than 5% of the enrolled voters within the political unit, in this case, the assembly district. Candidates who are nominated by such petition, assuming that the petition meets the requirements of law, then appear on the ballot on primary day and stand for election for the party position of state committeeman. Pursuant to Liberal Party Rules Article II, section 2, there are two state committeemen for each of the 150 assembly districts, making a total of 300 state committeemen in all. In the nomination of candidates for state office, in accordance with New York State Election Law, section 131, the state committeemen vote on a weighted vote basis commensurate with the number of votes

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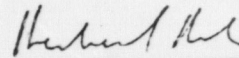
which were cast in the next preceding gubernatorial election for the Liberal Party candidate for governor.

7. New York State Election Law section 137, the Wilson Pakula Law, which is the subject of this action, provides in subdivision 4 thereof that "at a meeting of the members of the party committee representing the political subdivision for the office for which a designation or nomination is to be made, or of such other committee as the rules of the party may provide, * * * by a majority vote of those present at such meeting provided a quorum is present, such committee may authorize the designation or nomination of a person as candidate for any office who is not enrolled as a member of such party as provided in this section. * * *." The relevant rule of the New York State Liberal Party is article VIII section 10, copy of which is annexed as Exhibit "A". As appears from that rule, the committee having authority to waive is the Executive Committee.

8. The Executive Committee of the Liberal Party is formed pursuant to authorization in New York State Election Law section 14 in accordance with the rules of the party. The relevant rule providing for the organization of the Executive Committee is article II section 5 which provides "the State Executive Committee shall consist of the officers of the State Committee and 81 members elected by the State Committee." Under New York State Election Law section 15, the State Committee is required to be organized within 15 days after its election. At such organization it shall elect a chairman, treasurer and secretary and such other officers as

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its rules may provide. Within 3 days thereafter a certificate is filed with the Secretary of State setting forth the names and post office addresses of such officers. Under article II section 4 of the rules of the New York State Liberal Party the officers of the State Committee consist of a chairman, 9 vice-chairmen, a treasurer, a secretary and an assistant secretary, all of whom shall be elected by the State Committee. The Executive Committee, therefore, consists of 81 state committeemen plus the 13 officers, a total of 94 persons.


Herbert Rubin

Sworn to before me this
19th day of July, 1974



BERNARD J. WALD
Notary Public, State of New York
No. 31-4127450
Qualified in New York County
Commission Expires March 30, 1975

STATE OF NEW YORK
COUNTY OF NEW YORK } ss:

HEIDI HANSEDER, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides in Brooklyn, New York. That on the 19th day of July, 1974, deponent served the within Affidavit upon the following attorneys in this action, at their addresses designated by them for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States post office department within the State of New York:

Lawrence W. Schilling, Esq.
Attorney for Plaintiffs
36 West 44th Street
New York, N.Y. 10036

Thomas J. Spargo, Esq.
Acting Counsel for the Republican State Committee
90 State Street
Albany, N.Y. 12207

Trubin Sillocks Edelman & Knapp
Attorneys for Defendant Jacob K. Javits
375 Park Avenue
New York, N.Y. 10022

Louis J. Lefkowitz, Esq.
Attorney General of the State of New York
Attorney for Defendants, Board Members and
pursuant to N.Y. Exec. Law, §71
Two World Trade Center
New York, N.Y. 10047

Heidi Hanseder

Heidi Hanseder

Sworn to before me this
19th day of July, 1974

[Signature]

Notary Public

BERNARD J. WARD
Notary Public
18-11-11-11-11
City of New York
Commission Expires March 30, 1975

Section 10 (a) No petition for the purpose of designating any person as a candidate for nomination of the Liberal Party for public office at a primary election shall be valid unless the person so designated shall be enrolled as a member of the Liberal Party at the time of the filing of the petition.

(b) No nomination made by a state convention of the Liberal Party or by the state committee of the Liberal Party or by any other committee as provided by these rules and regulations shall be valid unless the person so nominated was enrolled as a member of the Liberal Party at the time of the filing of the certificate of nomination.

(c) No party designation or nomination of the Liberal Party made by a committee to fill vacancies and no party nomination of the Liberal Party made for an office to be filled at a special or general election by reason of a vacancy existing in such office, shall be valid unless the person so designated or nominated shall be an enrolled member of the Liberal Party at the time of the filing of such certificate.

(d) The provisions of subdivision (a), (b), and (c) to the contrary notwithstanding, the state executive committee may, at any meeting, by a majority vote of the members present at such meeting, provided a quorum is present, authorize the designation, nomination or substitution of a person as a candidate for any office who is not enrolled as a member of the Liberal Party as provided in this section, in the case where:

1. The designation, nomination or substitution is for an office to be voted upon by all the electors of the state;

2. The designation, nomination or substitution is for an office to be voted upon by the electors of a political subdivision embracing more than one county or parts of more than one county, provided, however, that where such designation, nomination or substitution is for an office to be filled by all the voters of the City of New York, such designation, nomination or substitution shall be authorized by a majority of those present at a joint meeting of the executive committees of each of the county committees of the Liberal Party within the City of New York, provided a quorum is present.

3. The designation, nomination or substitution is for an office to be voted upon by the electors of a political subdivision wholly contained within a county wherein no county committee of the Liberal Party is organized or exists; or

4. The designation, nomination or substitution is made, pursuant to law or to these rules and regulations, by the state committee, a state convention or the state executive committee or by a committee appointed by any of such bodies to fill a vacancy in such designation or nomination.

(e) Where the office for which such designation, nomination or substitution is made is wholly contained within a single county, such authorization may be made by the county committee or by the executive committee of such county committee, as the rules of such county committee may provide.

(f) The authorization provided for in subdivisions (d), and (e) shall be signified by the filing of a certificate, signed and acknowledged by the presiding officer and the secretary of the meeting at which such authorization was given, consenting to such designation, nomination or substitution, with the officer or board with whom or with which such designation, nomination or substitution shall have been filed not later than three days after the last day to file such designating petition, certificate of nomination or certificate of substitution, unless otherwise provided by law.

(g) The provisions of this section shall not apply to the nomination of candidates for judicial offices.

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Original

CT COURT
NEW YORK

ANDRA CARR,

Plaintiffs,

-against-

ALEX ROSE, DONALD SZANTHO HARRINGTON,
THE LIBERAL PARTY OF THE STATE OF NEW
YORK, THE STATE EXECUTIVE COMMITTEE,
JACOB K. JAVITS and ARTHUR H. SCHWARTZ,
REMO J. ACITO, WILLIAM H. McKEON and
DONALD RETTALIATA as members of the State
Board of Elections,

Defendants.

Before: MANSFIELD, C.J. and TYLER and BRIEANT, D.J.J.

LAWRENCE W. SCHILLING, ESQ., New York City,
Attorney for Plaintiffs.

HERZFELD & RUBIN, P.C., New York City, by Herbert
Rubin and Edward L. Birnbaum, Attorneys for
Defendants Alex Rose, Donald Szantho Harrington,
The Liberal Party, The State Executive Committee.

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
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OPINION

74 Civ. 2598 HRT

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TRUBIN, SILLCOCKS, EDELMAN & KNAPP, ESQS.,
New York City, by Ross Sandler, Attorneys
for Defendant Jacob K. Javits.

LOUIS J. LEFKOWITZ, Attorney General of the State
of New York, New York City, by Daniel M. Cohen,
Attorneys for Defendants Arthur H. Schwartz, Remo J.
Acito, William H. McKeon and Donald Rettaliata as
members of the State Board of Elections.

THOMAS J. SPARGO, ESQ., Albany, New York, for Amicus
Curiae, Republican State Committee.

TYLER, D. J.

On July 11, 1974, a three-judge court was convened pursuant to
28 U.S.C. §§ 2281 and 2284, to consider the constitutionality of the
Wilson-Pakula Law, New York Election Law § 137 (McKinney 1964,
1973-74 Supp.) ^{1/} (the "statute"), which provides that a person who is
not a member of a political party may not receive that party's nomination
or run in its primary unless that person receives the authorization of the
majority of the party's State Committee ^{2/} or of such other group as the
party rules may provide.

Plaintiffs in this action are Ramsey Clark, an enrolled Democrat who has unsuccessfully sought the 1974 nomination of the Liberal Party of the State of New York for United States Senator, and Chandra Carr, an enrolled member and "district leader" of the Liberal Party. Defendants are the Liberal Party; the State Executive Committee of that party; certain officers of the party; Jacob K. Javits, a member of the Republican Party and its candidate who has been designated, pursuant to § 131(2)(b) of the Election Law, as candidate of the Liberal Party for the office of United States Senator for the State of New York; and members of the State Board of Elections. Because of the alleged unconstitutionality of the statute, plaintiffs have asked this court to enjoin the State Board of Elections from processing the designation of Javits as candidate of the Liberal Party.

On July 17, 1974, the statutory court heard argument from counsel. The court has also considered an affidavit submitted on behalf of several defendants and various letters, submitted by plaintiffs, which amount to an exchange of correspondence between plaintiff Clark, defendant Javits and defendant Donald Harrington, Chairman of the Liberal Party. For

reasons hereinafter discussed, we conclude that plaintiffs' requested relief must be denied.

Plaintiffs have argued that the statute is unconstitutional because it denies to Clark equal protection of the law and because it interferes with Carr's right to vote. Before this court addresses itself to the merits, the issue of the standing of these plaintiffs to bring this action must be discussed.

What plaintiffs object to is the fact that under subdivision (4) of the statute, the State Executive Committee ^{3/} is empowered to authorize the candidacy of one non-member candidate while denying other non-party members a place on the ballot in the primary election, if it so chooses. In theory, before Clark could be eligible for such authorization, however, he would have had to fulfill certain prerequisites. As plaintiffs have admitted in their complaint, there are three basic methods under New York law by which a candidate may secure a party's nomination or designation as a candidate at a primary election, including a federal office such as that of Senator. One method is by receiving the majority vote of the State Committee. N. Y. Election Law § 131(2)(b)(1) (McKinney Supp. 1973-74). Another is by receiving twenty-five percent or more of the

by the State Committee and then making the prescribed written demand to the Secretary of State for entry of one's name as a candidate. N. Y. Election Law § 131(2)(b)(3) (McKinney Supp. 1973-74). The third is by securing a designating petition signed by "not less than twenty thousand or five per centum, whichever is less of the then enrolled members" of the particular party in question. N. Y. Election Law § 136(5) (McKinney Supp. 1973-74). A candidate who is a member of the party need do no more. A non-member candidate, however, as mentioned heretofore, must receive authorization from, in this case, the State Executive Committee. Such authorization must be filed no later than four days following filing of the designating petition. § 137(4).

As all parties concede, Clark unsuccessfully sought to receive the majority vote of the State Committee of the Liberal Party at its meeting on June 15, 1974. At that meeting, the Committee considered and voted on three nominations of non-party candidates for the office of Senator. Javits received 85.7% of the votes cast, Clark received 8.8% and another candidate, also an enrolled Democrat, received 3.4%. Since Clark received less than twenty-five percent of the votes cast, he was ineligible, under §§ 131(2)(b)(3) and 137(4) of the Election Law, to seek authorization to run in the Liberal Party primary on September 10, 1974.

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on the results of the State Committee meeting.

Clark, moreover, has not attempted to secure the petitions required under § 136(5). Indeed, by July 15, 1974, it was too late to do so. See Ch. 9 § 149-a(4), N. Y. Session Laws 24 (McKinney March 10, 1974). Plaintiffs have argued that it would have been futile for Clark to have pursued this route since, even if he had secured the requisite number of petitions, the State Executive Committee would have refused to authorize his candidacy in the primary. They point out that at the June 15 meeting, a resolution was defeated which would have provided that any non-member candidate who could comply with the provisions of § 136(5) would automatically receive the required authorization to run in the Liberal Party primary. That denial of a blanket authorization, however, does not appear to have been aimed specifically at Clark. We, therefore, are left to speculate whether or not, had he thereafter obtained the number of signatures of Liberal Party members required to comply with § 136(5), his request for authorization would have been

...more favorably by the State Executive Committee. For these reasons we have been troubled by the possibility that Clark lacks standing to urge that subdivision (4) of the statute is unconstitutional. See Storer v. Brown, _____ U.S. _____, 94 S.Ct. 1274, at 1281 (1974). Similarly, we have considered that Carr also may lack standing to attack the authorization provision since Clark, for want of the twenty-five percentum vote, or a valid designating petition, was not qualified to receive authorization. Storer, 94 S.Ct. at 1282..

Nonetheless, we prefer not to rest our decision upon lack of standing of plaintiffs. As plaintiffs' counsel in effect has argued, it can be reasoned that the events of the meeting of the State Committee on June 15 effectively rendered futile any attempts by Clark or on his behalf to obtain the requisite designating petition signed by rank and file Liberal Party members. The defeat of the general resolution offered by Merrill, apparently one of Clark's supporters, and the disappointingly small vote for Clark at that meeting may have been a sufficient indication that the State Executive Committee, if

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presented with a valid designating petition before July 15, would have denied authorization to Clark under the statute. With this assumption, we turn to the merits.

We conclude that plaintiffs' constitutional arguments, though possessing plausibility, must fail. Preliminarily, we assume that subdivision (4) places some "burden" on the electoral process because it delegates to the political parties the power to discriminate as between non-member candidates, granting authorization to one and denying it to others. From this undeniable proposition, it can be said further that the subdivision potentially limits the number of candidates on the primary ballot and the freedom of choice at least theoretically available to party members in this state. Recognizing all of this, the difficulty with plaintiffs' argument is that it requires that once one non-member candidate has been authorized to appear on the Liberal Party line in the primary, an infinite number should be allowed to do so, at least where they satisfy the designating petition requirements of § 136 of the Election Law.

The Supreme Court has held that a state such as New York has a "legitimate interest in regulating the number of candidates on the ballot," Bullock v. Carter, 405 U.S. 134, 145 (1972), and "in avoiding confusion,

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and even frustration of the democratic process..." that can result from an excessive number of non-party candidates. See Jenness v. Fortson, 403 U.S. 431, 442 (1971). The Liberal Party and the State of New York have a vital interest in regulating the qualification of candidates for office, including federal office. Storer, 94 S.Ct. at 1280; Jenness, supra, at 442; Art. I, § 4 cl. 1 of the Constitution.

Subdivision (4), in our view, is a discreet mechanism designed to satisfy a compelling state interest, the avoidance of voter confusion and possible weakening and even usurpation of party organization. See Storer, 94 S.Ct. at 1279; Rosario v. Rockefeller, 410 U.S. 752, 761-2 (1973). As the New York courts have recognized, subdivision (4) was designed "to protect the integrity of political parties and to prevent the invasion into or the capture of control of political parties by persons not in sympathy with the principles of such political parties."^{4/} Werbel v. Gernstein, 191 Misc. 275, 78 N.Y.S.2d 440 (Sup.Ct. Kings Co.), aff'd., 273 App. Div. 917, 78 N.Y.S.2d 926 (2d Dept. 1948).

The State Committee of the Liberal Party is elected pursuant to §§ 13 and 136 of the New York Election Law on a basis designed to insure that it accurately reflects the views of the Liberal Party members. Such

Committee, which has the responsibility of party leadership, may be trusted to determine which non-member candidate can properly advance the political philosophy of the party members. It is true that, according to the Rules of the Liberal Party, the State Executive Committee has been empowered to authorize the candidacy of non-party members. Further, we assume, at least arguendo, that the authorization of a non-party candidacy is not a private internal party matter but rather a public electoral function. Seergy v. Kings County Republican County Committee, 459 F.2d 308, 314 (2d Cir. 1972).

Nevertheless, under the statute, the State Committee as a whole also has the power to authorize the candidacy of a non-party member. Given the conceded events of the meeting of June 15, there has been no showing here that the statute by its terms has worked a denial of the one-man, one vote principle. Pursuant to § 131(2), members of the State Committee vote on a weighted vote basis in the nomination of candidates for state office; indeed, the vote heretofore described on June 15 proceeded on that basis. We

must presume, therefore, that the Committee's vote of authorization would have proceeded on the same basis had Clark presented prior to July 15 a valid designating petition.

Even were the Liberal Party, by its delegation of its powers of authorization to the State Executive Committee, acting unconstitutionally, a point we need not reach, this assumption would not necessitate invalidation of the statute. Nor would it require the invalidation of the nomination of Javits as candidate for Senator. As has been readily admitted, Javits had the backing of the great majority of the State Committee. Moreover, as noted, in fact no action adverse to Clark has been taken by the Executive Committee of the Liberal Party.

If to open the Liberal Party to one non-member candidate were to open it to five, ten or twenty non-member candidates, voter confusion at a primary election would be a real possibility. The effect could be not only confusion but deception as contemplated by the Supreme Court in Jenness, supra, and Bullock, supra. Another party in New York, for example, might encourage or induce one or more of its members to seek

authorization to appear on the Liberal Party primary ballot in order to undercut the chances of the candidate thought by the bulk of the Liberal Party members to best reflect their Party's philosophy and views.

Conversely, to forbid all non-member candidates from running on, for example, the Liberal Party line would foreclose fusion tickets. New York, by enacting the statute, therefore, has reasonably sought to allow fusion tickets where desired without subjecting its political parties and their members to the debilitating effects of voter confusion and usurpation of the party organizations. We believe that the statute, therefore, meets a constitutionally legitimate state purpose within the electoral process.

It may not be irrelevant to note that the statute works a minimal impairment upon the franchise rights of both plaintiffs. Clark, an enrolled Democrat, has the right to contest for the nomination in the primary of his party; indeed, he conceded at the hearing that he is doing so. Further, the Election Law permits him, as a statewide candidate, to appear on the ballot as the candidate of an independent group. New York Election Law, § 138 (McKinney Supp. 1973-74). Still further, he could change his party enrollment to the Liberal Party, New York Election Law, § 386 (McKinney 1964), and file designating petitions to oppose defendant Javits, in the primary with

need to seek authorization. It should also be noted that pursuant to § 148 of the Election Law, a non-party member who has the support of twenty thousand or five percentum, whichever is less, of the enrolled voters of the party can secure permission to have the members write in his name at a primary election. This can be done without the authorization of the State Committee or the State Executive Committee. In short, the statute does not deny Clark access to the voters; it merely sets forth certain preconditions to his becoming the candidate of a party in which he is not an enrolled member. Correspondingly, Carr suffers minimal restraints upon her voting opportunities and rights, which are more than offset by the compelling state interest to which we have referred. Furthermore, we note that, pursuant to § 148, Carr may seek opportunity to ballot for Clark as a write-in candidate in the Liberal Party primary or, pursuant to § 138, sign a designating petition for Clark as candidate of an independent group.

At least upon the facts presented by plaintiffs in this case, therefore, the statute works neither a denial of equal protection of the laws nor a denigration of the right to vote as protected by the First and Fourteenth Amendments. Plaintiffs' claim that the statute is unconstitutional is

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dismissed, and this court declines to restrain the State Board of Elections from processing the designation of defendant Javits by the Liberal Party.

It is so ordered.

Dated: July 29, 1974

Walter R. Mansfield

Donald R. Tyler, Jr.

Charles L. Bryant Jr.

FOOTNOTES1/

§ 137 Limitation on the right to designate or nominate party candidates

- "1. No petition for the purpose of designating any person as a candidate for party nomination at a primary election shall be valid unless the person so designated shall be enrolled as a member of the party referred to in said designating petition at the time of the filing of the petition.
2. No nomination made by any committee of a political party shall be valid unless the person so nominated was enrolled as a member of such party at the time of the filing of the certificate of nomination, provided, however, that such restriction shall not apply to the nomination or designation of a candidate for statewide judicial office made by a state committee in the nomination procedure prescribed in section one hundred thirty-one.
3. No party designation or nomination made by a committee to fill vacancies, and no party nomination made for an office to be filled at a special or general election by reason of a vacancy existing in such office, shall be valid unless the person so designated or nominated shall be an enrolled member of the political party referred to in the certificate of substitution or of nomination at the time of the filing of such certificate.
4. Notwithstanding the provisions of subdivisions one, two and three of this section, at a meeting of the members of the party committee representing the political subdivision of the office for which a designation or nomination is to be made, or of such other committee as the rules of the party may provide, except as hereinafter in this subdivision provided with respect to certain offices in the city of New York, by a majority vote of those present at such meeting provided a quorum is present, such committee may authorize the designation or nomination of a person as candidate for any office who is not enrolled as

TO:

Lawrence W. Schilling, Esq.
Attorney for Plaintiffs
36 West 44th Street
New York, New York 10036

Herzfeld, & Rubin, Esqs.
40 Wall Street
New York, New York 10005

Trubin, Sillcocks, Edelran & Knapp, Esqs.
375 Park Avenue
New York, New York

Thomas J. Sparrow, Esq.
8 Hiawatha Drive
Guilderland, New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
RAMSEY CLARK and CHANDRA CARR,

Plaintiffs,

-against-

ALEX ROSE, DONALD SZANTHO HARRINGTON,
THE LIBERAL PARTY OF THE STATE OF NEW
YORK, THE STATE EXECUTIVE COMMITTEE,
JACOB K. JAVITS and ARTHUR H. SCHWARTZ,
REMO J. ACITO, WILLIAM H. McKEON and
DONALD RETTALIATA as members of the
State Board of Elections,

Defendants.

:

: 74 Civ. 2598 (H.R.T.)

:

: NOTICE OF MOTION

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:

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:

:
-----X

S I R S :

PLEASE TAKE NOTICE that, upon the annexed affidavit of Ben Davidson, sworn to on the 15th day of January 1975, and upon the pleadings and proceedings heretofore had herein, the undersigned will move this Court before the Honorable Harold R. Tyler in Room 1506 of the United States District Court for the Southern District of New York at the Courthouse thereof, Foley Square, New York, New York, on the 31st day of January 1975, at 2:15 P. M. or as soon thereafter as counsel can be heard for an order dismissing the complaint as against defendants Rose, Harrington, The Liberal Party of the State of New York and The State Executive Committee, pursuant to Rules 12 (b) and (c) of the Federal Rules of Civil Procedure on the grounds that said complaint fails to state a Federal claim, plaintiffs have no

standing to maintain this action and the issues herein have been rendered moot and for a further order declaring the relevant statute and the conduct of the Liberal Party constitutional and for such other and further relief as to the Court may seem just and proper.

HERZFELD & RUBIN, P.C.

By *[Signature]*
a member of the firm

Attorneys for Liberal Party
Defendants
40 Wall Street
New York, New York 10005
(212) 344-0680

TO:

LAWRENCE W. SCHILLING, Esq.
Attorney for Plaintiffs
36 West 44th Street
New York, N. Y. 10036

LOUIS J. LEFKOWITZ,
Attorney General of the State
of New York
Two World Trade Center
New York, N. Y. 10047
Att.: Daniel M. Cohen, Ass't
Attorney General

TRUBIN SILLCOCKS EDELMAN & KNAPP
Attorneys for Defendant Javits
375 Park Avenue
New York, N. Y. 10022

72a
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
RAMSEY CLARK and CHANDRA CARR,

Plaintiffs,

Index No.
74 civ. 2598 HRT

-against-

AFFIDAVIT

ALEX ROSE, DONALD SZANTHO HARRINGTON,
THE LIBERAL PARTY OF THE STATE OF NEW
YORK, THE STATE EXECUTIVE COMMITTEE,
JACOB K. JAVITS and ARTHUR H. SCHWARTZ,
REMO J. ACITO, WILLIAM H. McKEON and
DONALD RETTALIATA as members of the State
Board of Elections,

Defendants.
-----X

STATE OF NEW YORK)
 : SS:
COUNTY OF NEW YORK

BEN DAVIDSON, being duly sworn, deposes and says:

1. I am the Executive Director of the defendant New York State Liberal Party ("Liberal Party") and am familiar with the facts hereip set forth. I make this affidavit in support of the motion by The Liberal Party defendants (Rose, Harrington, The Liberal Party and The State Executive Committee) to dismiss the complaint herein.

2. This Court, after extended argument and examination of the undisputed facts, rendered its decision dated July 29, 1974, denying plaintiffs' challenge of the nomination by the State Committee as to the office of U. S. Senator. Plaintiffs failed to avail themselves of any right to review. Rather, they campaigned in the general election, seeking with misstatements

of the facts to exploit this litigation. After sustaining a defeat by the electorate, and after the issues were necessarily rendered moot, plaintiffs refused to discontinue the action and have made it necessary for defendants to apply to the Court for an order of dismissal.

3. I respectfully submit that dismissal should be granted because a) the complaint fails to state a federal claim upon which the Court can grant relief, and b) plaintiffs have no standing to maintain this action. It is clear, in addition, that the issues have been rendered moot by the failure of plaintiffs to seek a review or final determination before the general election, but I do not rely on that ground.

4. Plaintiffs' complaint alleges that the waiver provision of the Wilson-Pakula Law (N.Y. Election Law, §137) is unconstitutional on its face in that it deprives plaintiffs and others of the equal protection of the laws and other constitutional rights with respect to the election of a United States Senator. It also alleges that the defendant Rose and other Liberal Party leaders so controlled the party that they prevented plaintiff Clark from seeking the nomination of the Liberal Party for the United States Senate in violation of his equal protection rights. The relief sought by plaintiffs in the complaint was a judgment; 1) declaring the waiver provisions of the Wilson-Pakula Law unconstitutional; 2) declaring that the conduct of the Liberal Party defendants was wrongful and deprived plaintiffs and others of equal protection of the laws and other Federally protected rights; and 3) enjoining all the defendants from taking any actions to process the Liberal Party designation of defendant Javits.

5. On plaintiffs' motion, a three-judge court was impaneled which unequivocally held that the Wilson-Pakula Law, under which defendant Javits was designated as the Liberal Party's candidate for U. S. Senator, is constitutional. The Court also declined to restrain the State Board of Elections from processing the designation of defendant Javits by the Liberal Party as its candidate for U. S. Senator.

6. The uncontroverted evidence was to the effect that the Liberal Party State Committee, the representatives of the enrolled Liberal Party members throughout the state who had been duly elected pursuant to the New York State Election Law at Primary Day elections, had given equal opportunity to Clark to have his name presented to the statutory convention and received only 8.8% of the votes against Javits's 85.7% of the vote. The strange argument that Clark was denied access to the members of the State Committee, whose identity with names and addresses was at all times on file with the Secretary of State as a public record, was plainly rejected.

7. In its decision, the Court found that the facts presented by plaintiffs would not support either of the counts set forth in their complaint and the court specifically stated at page 13 of its opinion "at least upon the facts presented by plaintiffs in this case, therefore, the statute works neither a denial of equal protection of the laws nor a denigration of the right to vote as protected by the First and Fourteenth Amendments."

8. On the failure by plaintiffs thereafter to take any further action in the case and, after the Elections had been held, to discontinue the action, a pretrial conference was held before Judge Tyler on December 6, 1974. Plaintiffs' counsel attempted, but was unable at that time, to effectively delineate the substantive issues plaintiffs contend remain to be tried. A review of the pleadings and proceedings herein demonstrates that there are no issues to be tried and that plaintiffs' action should be dismissed as lacking any merit. In fact, the three-judge court stated in footnote 3 of its memorandum decision that it recognized "the dubious merit of the second stated claim." The "second stated claim" in the complaint, which apparently constitutes the only unresolved issue, addresses itself to alleged unconstitutional application of the statute by the State Committee of the Liberal Party. This claim, on the undisputed facts and the applicable law, is specious.

9. The events leading up to the Javits nomination by the Liberal Party and plaintiffs' failure to pursue their rights under the election law were discussed by the Court. The Court stated:

"As all parties concede, Clark unsuccessfully sought to receive the majority vote of the State Committee of the Liberal Party at its meeting on June 15, 1974. At that meeting, the Committee considered and voted on three nominations of non-party candidates for the office of Senator. Javits received 85.7% of the votes cast, Clark received 8.8% and another candidate, also an enrolled Democrat, received 3.4%. Since Clark received less than twenty-five percent of the votes cast, he was ineligible under §§ 131(2)(b)(3) and 137(4) of the Election Law, to seek authorization to run in the Liberal Party primary on September 10, 1974, based on the results of the State Committee meeting.

Clark, moreover, has not attempted to secure the petitions required under §136(5). Indeed, by July 15, 1974, it was too late to do so. Plaintiffs have argued that it would have been futile for Clark to have pursued this route since, even if he had secured the requisite number of petitions, the State Executive Committee would have refused to authorize his candidacy in the primary. They point out that at the June 15 meeting, a resolution was defeated which would have provided that any non-member candidate who could comply with the provisions of §136(5) would automatically receive the required authorization to run in the Liberal Party primary. That denial of a blanket authorization, however, does not appear to have been aimed specifically at Clark. We, therefore, are left to speculate whether or not, had he thereafter obtained the number of signatures of Liberal Party members required to comply with § 136(5), his request for authorization would have been viewed more favorably by the State Executive Committee. For these reasons we have been troubled by the possibility that Clark lacks standing to urge that subdivision (4) of the statute is unconstitutional. See Storer v. Brown, U.S. , 94 S. Ct. 1274, at 1281 (1974). Similarly, we have considered that Carr also may lack standing to attack the authorization provision since Clark, for want of the twenty-five percentum vote, or a valid designating petition, was not qualified to receive authorization. Storer, 94 S. Ct. at 1282." (Emphasis added)

10. It should also be noted that the State Committee consists of more than 300 persons. The Liberal Party State Executive Committee, which likewise is constituted under the Election Law, consists of 94 of the members of the State Committee. Thus, contrary to plaintiffs innuendos, the governing bodies whose actions plaintiffs attack are broad based, lawfully constituted representatives of the enrolled voters of the Liberal Party. The attempt by Clark to unfairly undermine the processes of the Liberal Party is unworthy and irresponsible. His

allegations fail to state or support a claim upon which relief can be granted in this Court. Neither plaintiff was denied equal protection of the laws. Clark's name was placed in nomination at the same time as Javits. Equal time and equal seconds were allowed for Clark's nomination as for Javits. Mr. Merrill, who nominated Clark, was given full opportunity to address the State Committee meeting. Among other things, Mr. Merrill took the opportunity to move to permit entry into the Liberal Party primary to any candidate not enrolled in the party who obtained sufficient signatures by petition for nomination for the position of U. S. Senator. This motion was defeated by a vote of 180 against and 19 for. Obviously, Clark had ample opportunity to become the Liberal Party candidate. His nomination failed because the State Committeemen who were charged with the responsibility to nominate were not persuaded of the merits of his candidacy. This Court cannot assist plaintiff in resolving such a deficiency. The complaint should be dismissed for failure to state a claim which this Court can remedy.

11. In addition, while the three-judge court did not render its decision based upon the lack of standing of plaintiffs to attack the designation of Javits, the court specifically alluded to this point on page 7 of its memorandum decision where it stated "For these reasons we have been troubled by the possibility that Clark lacks standing to urge that subdivision (4) of the statute is unconstitutional. . . . Similarly, we have considered that Carr also may lack standing. . . ." As set forth in the accompanying memorandum of law, under the present circumstances the complaint should be dismissed based on plaintiffs' lack of standing.

12. The Liberal Party's State Committee scrupulously followed the requirements of the statute in nominating its candidate for U. S. Senator. The election for United States Senator took place months ago and Javits was duly elected. This baseless action should now be dismissed.

WHEREFORE, it is respectfully requested that this motion be granted and an order issued dismissing the complaint on the grounds, among others, that the complaint fails to state a claim upon which this Court can grant relief and that plaintiffs have no standing to maintain this action and declaring the statute and the conduct of the Liberal Party constitutional.

Ben Davidson
Ben Davidson

Sworn to before me this
15th day of January 1974.

Mark Grundler

MARK GRUNDLER
Notary Public, State of New York
No. 201,400
Qualified in Kings County
Commission Expires March 30, 1975

Rec'd by mail
12-13-74

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
RAMSEY CLARK and
CHANDRA CARR,

Plaintiffs,

-against-

ALEX ROSE, DONALD SZANTHO HARRINGTON,
THE LIBERAL PARTY OF THE STATE OF NEW
YORK, THE STATE COMMITTEE OF THE
LIBERAL PARTY, THE STATE EXECUTIVE
COMMITTEE, JACOB K. JAVITS and JOHN J.
GHEZZI, as Secretary of State of the
State of New York,

Defendants.
----- x

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: 74 Civ. 2598 (H.R.T.)

:
: NOTICE OF MOTION
:

S I R S :

PLEASE TAKE NOTICE that, upon the annexed affidavit of
Ross Sandler, sworn to on the 11th day of December, 1974, and
upon all the pleadings and proceedings had herein, the undersigned
will move this Court on the 20th day of December, 1974, before
Hon. Harold R. Tyler, United States District Judge at the United
States District Courthouse, Room 1105, Foley Square, Borough of
Manhattan, City and State of New York, at 2:15 p.m. in the after-
noon of that day or as soon thereafter as counsel can be heard
for an order dismissing the complaint against defendant Jacob K.
Javits pursuant to Rule 12(c) of the Federal Rules of Civil

Procedure on the ground that said complaint fails to state a claim against defendant Jacob K. Javits upon which relief can be granted and for such other and further relief as the Court may deem just and proper.

Yours, etc.,

TRUBIN SILLCOCKS EDELMAN & KNAPP

By

Attorneys for Defendant
Jacob K. Javits
Office & P. O. Address
375 Park Avenue
New York, N. Y. 10022
Tel.: (212) 759-5400

To:

LAWRENCE W. SCHILLING, ESQ.
36 West 44th Street
New York, N. Y. 10036

HERZFELD & RUBIN, P.C.
40 Wall Street
New York, N. Y. 10005

LOUIS J. LEFKOWITZ,
Attorney General of the State
of New York
Two World Trade Center
New York, N. Y. 10047
Att.: Daniel M. Cohen, Ass't
Attorney General

81a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
RAMSEY CLARK and
CHANDRA CARR,

Plaintiffs,

-agaipst-

ALEX ROSE, DONALD SZANTHO HARRINGTON,
THE LIBERAL PARTY OF THE STATE OF NEW
YORK, THE STATE COMMITTEE OF THE
LIBERAL PARTY, THE STATE EXECUTIVE
COMMITTEE, JACOB K. JAVITS and JOHN J.
GHEZZI, as Secretary of State of the
State of New York,

Defendants.
----- x

74 Civ. 2598 (H.R.T.)

AFFIDAVIT OF
ROSS SANDLER

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

ROSS SANDLER, being duly sworn, deposes and says:

I am an attorney associated with the firm of Trubin
Sillcocks Edelman & Knapp, attorneys for Jacob K. Javits ("Javits"),
a defendant in the captioned action. This affidavit is respect-
fully submitted in support of Javits' motion to dismiss the com-
plaint herein as against him on the ground that the complaint
fails to state a claim upon which relief can be granted. The
plaintiffs simply do not allege any wrongdoing by Javits; nor do
they seek any relief as against him.

Plaintiffs allege two claims for relief in their complaint. In Count I plaintiffs allege that the waiver provision of the Wilson-Pakula Law (N.Y. Election Law, § 137) is unconstitutional on its face in that it deprives plaintiffs and others of the equal protection of the laws and other rights with respect to election of United States Senator. In Count II, plaintiffs allege that the defendant Alex Rose and other Liberal Party leaders so controlled the Liberal Party that they prevented plaintiff Clark from seeking the nomination of the Liberal Party in violation of federally secured rights. Copies of the complaint and the answer of defendant Javits are annexed hereto.

On plaintiffs' motion a three judge court was impanelled which, after argument, held in a written decision filed on July 30, 1974 that the Wilson-Pakula Law was constitutional and, accordingly, declined to restrain the State Board of Elections from processing the designation of defendant Javits by the Liberal Party. The court dismissed plaintiffs' complaint insofar as the complaint alleged that the Wilson-Pakula Law was unconstitutional. Plaintiffs did not appeal the Court's decision and have not contested the re-election of Javits as Senator from the State of New York which occurred on November 5, 1974, or his assumption of duties as United States Senator.

The court, in its written decision indicated that the facts then before it would not support either of plaintiffs'

claims for relief. (Slip. Op. pp. 10, 11 and 13.) Nevertheless, plaintiffs suggest that certain aspects of their complaint remain viable. Whatever viability remains, however, with respect to other defendants, there can be no doubt that the complaint totally fails to state a claim for relief against Javits.

The remaining allegations of the complaint relate entirely and without exception to alleged unlawful conduct of the Liberal Party and its leaders in excluding plaintiff Clark from participating in Liberal Party nominating activities. Thus, in the operative paragraphs of the complaint, plaintiffs expressly state that the gravamen of their complaint is solely against the Liberal Party leaders:

"21. As a matter of longstanding practice the foregoing powers over the designation and nomination of candidates have actually been and are now so controlled by defendant Rose alone or by defendant Rose and other Liberal Party leaders. This longstanding actual control, together with the other conduct of the party leaders described below, has deprived and is depriving plaintiffs and others, including members of the defendant State Committee and enrolled members of the defendant Liberal Party, of federally-protected rights with respect to the election of a United States Senator.

* * * * *

"23. . . . The designation process remained throughout a closed process, and the purported designation of defendant Javits was dictated by the party leaders. This conduct was wrongful and deprived plaintiffs and others of equal protection of the laws and other federally-protected rights with respect to the election of a United States Senator."

Javits, a registered Republican, is not an officer of the Liberal Party or a member thereof. The references to Javits in the complaint are entirely inconsequential, there being no suggestion of wrongdoing on his part. Thus the plaintiffs in their complaint identify Javits as an enrolled Republican and declared candidate for United States Senate (Complaint, Para. 10), allege that copies of Clark's written demands upon Liberal Party leadership were sent to Javits (Complaint, Para. 22), and, finally, allege that Javits did appear at one Liberal Party meeting during the course of the campaign to which the Liberal Party had not invited other candidates. (Complaint, Para. 23.)

The evidence submitted by plaintiffs in support of their position before the three judge court underscored the fact that plaintiffs' allegations are directed solely towards the Liberal Party and its leaders. (Submission of Plaintiffs, July 18, 1974, Exhibits "B", "D", "F" and "G".) In Exhibit B, Clark's letter to Javits dated May 21, 1974, for example, Clark merely enclosed a copy of his written demands upon the Liberal Party leaders and solicited Javits' support with respect to those demands.

Plaintiffs moreover, no longer demand relief as against defendant Javits. In their remaining specific demand for relief plaintiffs seek only a declaration that the conduct of the Liberal

Memorandum Decision

Cogman

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAMSEY CLARK and
CHANDRA CARR,

Plaintiffs,

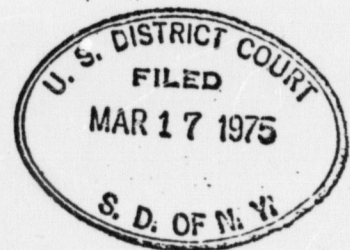
-against-

ALEX ROSE, et al.,

Defendants.

MEMORANDUM

74 Civ. 2598 HRT



TYLER, D.J.

For the previous history of this litigation, see Clark v. Rose, 379 F. Supp. 73 (decided July 29, 1974), wherein a three-judge panel of this court rejected plaintiffs' attack upon the constitutionality of the Wilson-Pakula Law, New York Election Law § 137 (McKinney's Consol. Laws 1964, c. 17, 1973-74 Supp.). Thereafter, at least the court and

defense counsel in this action assumed that once the November, 1974 election was passed, the issues in this case were practically, if not legally, moot. Notwithstanding, however, at a conference of counsel in early December, 1974, the attorney for plaintiffs indicated that he thought the case was still open for further litigation. As a result of his remarks, the defendants thereupon moved to dismiss the action, and their motions were argued to the court on January 31, 1975. On that day, counsel for plaintiff agreed with the undersigned that the issues were moot as to defendant Jacob Javits but argued that the case was still cognizable as against the remaining defendants. Upon considering the arguments, I respectfully disagree and conclude that the case should be dismissed for reasons to be briefly summarized hereinafter.

1. Particularly now that the 1974 senatorial election in New York has been held and decided, I believe, as did the three-judge panel, (see 379 F. Supp. at 75-76), that there is considerable doubt that either plaintiff has standing to attack § 137.

2.^a It is true, of course, that the three-judge panel, as it was obliged to do under relevant federal law, confined itself strictly in its

July 29, 1974 opinion to deciding the attack on the constitutionality of § 137. This meant that the statutory court was technically considering the first of the two stated claims in plaintiffs' complaint. As a practical matter, however, the statutory court of which the undersigned was a member was aware of the conceded facts of candidate Clark's attempts to persuade the Liberal Party to designate him under the Wilson-Pakula Law. Under those conceded facts, the panel could see no constitutional infirmity in the statute on its face, and so held. Further, though it was unnecessary to so decide, this member of the panel, who was the writer of that opinion, could conceive of no reason or basis to perceive that § 137 had been applied in an unconstitutional manner vis-a-vis plaintiffs. Thus, in effect, as defendants now argue, the statutory court really decided all of the issues in this case. Concededly, counsel for plaintiffs has made an ingenious effort to cast up all kinds of "issues" and factual inquiries which he says should be considered by the court consisting of one judge (see pages 10 and 11 of plaintiffs' Brief in Opposition to these motions).

But as I read and understand the ingenious list of factual inquiries set forth by counsel, it amounts to a general rummage of irrelevant historical facts and statistics which have nothing to do with the present interests of former candidate Clark and Chandra Carr as a member of the Liberal Party of New York. /a

3. It is true, as plaintiffs' counsel argue, that under certain circumstances the completion of an election which triggered litigation such as this does not necessarily moot the issues raised. Storer v. Brown, 415 U.S. 724, at 737 fn. 8 (1974). At least theoretically, then, plaintiffs may be correct in asserting that at some future election someone will mount a similar attack upon § 137 of the New York Election Law. But this possibility ignores the points already made hereinabove.

The motion to dismiss is granted in favor of all of the defendants left in the case. It is so ordered.

Dated: March. 14, 1975

H. P. Tyler, Jr.
U.S.D.J.

90a

HERZFELD & RUBIN, P.C.

Taylor, d.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

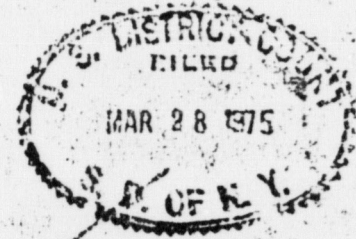
-----x
RAMSEY CLARK and CHANDRA CARR,

Plaintiffs,

-against-

ALEX ROSE, et al.,

Defendants.
-----x



JUDGMENT

74 Civ. 2598 (H.R.T.)

Defendants, Alex Rose, Donald S. Harrington, The Liberal Party of the State of New York and the State Executive Committee, by their attorneys, Herzfeld & Rubin, P.C., having moved this Court for an Order, pursuant to Rules 12(b) and (c) of the Federal Rules of Civil Procedure, dismissing the complaint herein and the Attorney General of the State of New York having joined in such motion, and said motion having come on for hearing before the undersigned on January 31, 1975, in Room 1506 of the United States District Court for the Southern District of New York;

NOW, on reading and filing the notice of motion and the affidavit of Ben Davidson, sworn to January 15, 1975, in support of the motion, and all the parties having appeared and having been heard, and due deliberation having been had

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thereon, and this Court having rendered its memorandum decision;

NOW, on motion of Hersfeld & Rubin, P.C., it is

ORDERED, ADJUDGED and DECREED that the motion to dismiss the complaint herein be and the same is hereby granted and it is further

ORDERED, ADJUDGED and DECREED that judgment be entered herein, dismissing the action against all defendants with prejudice.

Dated: New York, New York
March 26, 1975

H. R. Tyler, Jr.
HAROLD R. TYLER, JR.
U.S.D.J. *MA.*

JUDGMENT ENTERED - 3-31-75

Raymond J. Burghardt
CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAMSEY CLARK and CHANDRA CARR,
Plaintiffs,
-against-
ALEX ROSE, et al.
Defendants.

74 Civ. 2558
(S.D.N.Y.)

NOTICE OF APPEAL

Now comes plaintiffs, RAMSEY CLARK and CHANDRA CARR, and hereby gives notice of appeal to the United States Court of Appeals for the Second Circuit from the judgment of the District Court entered on March 31, 1975 dismissing the within action.

Leon Friedman
LEON FRIEDMAN
Hofstra University
School of Law
Hempstead, New York 11550

Lawrence Stilling
LAWRENCE STILLING
36 West 44th Street
New York, N.Y. 10018

Attorneys for Plaintiff

